



**Russell Badders**  
Vice President, Associate General Counsel

March 27, 2020

Mr. Adam Teitzman, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RE: Docket No. 20180162-EI, Order Number PSC-2019-0070-FOF-EI  
Application of Gulf Power Company for authority to receive common equity  
contributions and to issue and sell securities  
Document 2 of 3

Dear Mr. Teitzman:

Pursuant to Rule-25-8.009, F.A.C., attached is the Consummation Report dated  
March 27, 2020, for official filing in the above-referenced docket.

Sincerely,

A handwritten signature in cursive script that reads 'Russell Badders'.

Russell Badders  
Vice President & Associate General Counsel  
Gulf Power Company

md

Attachments

cc w/ att.: Florida Public Service Commission

*In the opinion of Maynard, Cooper & Gale, P.C., Bond Counsel, under existing law and assuming the accuracy of certain representations and certifications and compliance by the Company and the Issuer with certain tax covenants, interest on the Series 2019 Bonds will be excluded from the gross income of the holders thereof for federal income tax purposes, except for interest on any Series 2019 Bond for any period during which such Bond is held by a person who is a "substantial user" of the Project (defined below) or a "related person" within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended. Bond Counsel is further of the opinion that, under existing law, interest on the Series 2019 Bonds will be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. In the opinion of Bond Counsel, under existing law, interest on the Series 2019 Bonds is exempt from income taxation in the State of Mississippi. See "TAX MATTERS" herein.*

**\$55,000,000**

**MISSISSIPPI BUSINESS FINANCE CORPORATION**

**Revenue Bonds**

**(Gulf Power Company Project),**

**Series 2019**

**CUSIP: 605279 MH8\***

**Interest Accrual Date: Date of Delivery**

**Due: December 1, 2049**

The above captioned bonds (the "Series 2019 Bonds") may bear interest at a Daily, Weekly, Commercial Paper or Long-Term Rate, as described herein. The initial Interest Rate Period for the Series 2019 Bonds will be a Daily Interest Rate Period.

The Series 2019 Bonds will be subject to repurchase and redemption upon the terms and in the manner described herein.

**THE SERIES 2019 BONDS ARE NOT A DEBT OR A GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE MISSISSIPPI BUSINESS FINANCE CORPORATION (THE "ISSUER"), THE STATE OF MISSISSIPPI OR ANY POLITICAL SUBDIVISION THEREOF. THE SERIES 2019 BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE FROM THE TRUST ESTATE PLEDGED THERETO. NEITHER THE ISSUER, THE STATE OF MISSISSIPPI, NOR ANY POLITICAL SUBDIVISION THEREOF HAS PLEDGED ITS FAITH AND CREDIT OR TAXING POWER TO THE PAYMENT OF THE AMOUNTS DUE ON THE SERIES 2019 BONDS.**



**Gulf Power®**

The Series 2019 Bonds will be issuable as fully registered bonds and will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Series 2019 Bonds. Purchases of Series 2019 Bonds may only be made (1) in the principal amount of \$100,000 and any integral multiple of \$5,000 in excess thereof while the Series 2019 Bonds bear interest at a Daily or Weekly Interest Rate, (2) in the principal amount of \$100,000 and any integral multiple of \$1,000 in excess of \$100,000 while the Series 2019 Bonds bear interest at a Commercial Paper Term Rate, and (3) in the principal amount of \$5,000 and any integral multiple of \$5,000 while the Series 2019 Bonds bear interest at a Long-Term Interest Rate. Except under the limited circumstances described herein, beneficial owners of interests in the Series 2019 Bonds will not receive certificates representing their interests in the Series 2019 Bonds. Payments of principal and premium, if any, and interest on Series 2019 Bonds will be made through DTC and its participants and disbursements of such payments to purchasers will be the responsibility of such participants (see "THE SERIES 2019 BONDS—Book-Entry System" herein). The Series 2019 Bonds are subject to redemption prior to maturity as described herein. U.S. Bank National Association, is the Trustee for the Series 2019 Bonds. U.S. Bank National Association is the Tender Agent/Paying Agent/Registrar for the Series 2019 Bonds.

---

**Price: 100%**

---

*The Series 2019 Bonds will be offered by the Underwriter when, as and if issued by the Issuer and accepted by the Underwriter, subject to the approving opinion of Maynard, Cooper & Gale, P.C., Bond Counsel, and to certain other conditions. Morgan, Lewis & Bockius LLP and Liebler, Gonzalez, & Portuondo, counsel to Gulf Power Company (the "Company"), and, with respect to certain matters of Mississippi law, Maynard, Cooper & Gale, P.C. will pass upon certain legal matters pertaining to the Company. Certain legal matters will be passed upon for the Underwriter by Ballard Spahr LLP, Philadelphia, Pennsylvania, counsel to the Underwriter. Balch & Bingham LLP will pass upon certain legal matters for the Issuer. The Series 2019 Bonds will be available for delivery through the facilities of DTC on or about December 12, 2019.*



**Fifth Third  
Securities**

December 3, 2019

\* CUSIP® is a registered trademark of the American Bankers Association ("ABA"). CUSIP data herein are provided by CUSIP Global Services, operated on behalf of the ABA by S&P Global Market Intelligence, a division of S&P Global Inc. The CUSIP number listed above is being provided solely for the convenience only and none of the Issuer (as defined herein), the Company nor the Underwriter makes any representation with respect to such number nor undertakes any responsibility for its accuracy now or at any time in the future. The CUSIP number is subject to being changed after the issuance of the Series 2019 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of the Series 2019 Bonds or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the Series 2019 Bonds.



In connection with this offering, the Underwriter may over allot or effect transactions that stabilize or maintain the market price of the Series 2019 Bonds at levels above those that might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

<u>Addresses Of Certain Parties</u>	
The Company	Gulf Power Company 700 Universe Boulevard Juno Beach, Florida 33408 Attention: Treasurer
Initial Remarketing Agent for the Series 2019 Bonds	Fifth Third Securities, Inc. 38 Fountain Square Plaza MD 1090SB Cincinnati, OH 45263 Attn: Remarketing Desk
Trustee/ Tender Agent/Paying Agent/Registrar	U.S. Bank National Association Attention: Global Corporate Trust 1349 W. Peachtree Street, NW Suite 1050 Atlanta, Georgia 30309

No dealer, salesman or any other person has been authorized by the Issuer, by the Company or by the Underwriter to give any information or to make any representation other than as contained in this Official Statement or in the Appendices hereto in connection with the offering described herein, and, if given or made, such other information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer of any securities other than those described on the cover page or an offer to sell or a solicitation of an offer to buy in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. No representation or warranty is made as to the accuracy or completeness of the information contained in this Official Statement, and nothing contained in this Official Statement is, or shall be relied on as, a promise or representation by the Issuer or the Underwriter. This Official Statement is submitted in connection with the sale of securities as referred to herein, and may not be reproduced or be used, in whole or in part, for any other purpose. The delivery of this Official Statement at any time does not imply that information herein or in the Appendices hereto is correct as of any time subsequent to its date.

Reference to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Rule 15c2-12 adopted by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

---

## TABLE OF CONTENTS

	Page
SELECTED INFORMATION RELATING TO THE SERIES 2019 BONDS.....	1
CERTAIN DEFINITIONS .....	7
INTRODUCTORY STATEMENT .....	9
THE ISSUER .....	10
THE SERIES 2019 BONDS.....	12
SPECIAL CONSIDERATIONS RELATING TO THE SERIES 2019 BONDS.....	27
THE AGREEMENT .....	28
THE INDENTURE.....	31
TAX MATTERS.....	36
CONTINUING DISCLOSURE.....	37
UNDERWRITING .....	38
LEGALITY .....	38
VALIDATION AND LITIGATION .....	38



Appendix A—Gulf Power Company  
Appendix A-1— Company Financial Statements  
Appendix B—Summary of Terms  
Appendix C—Form of Approving Opinion of Bond Counsel  
Appendix D—Forms of Notice of Tender of Book-Entry Bonds  
Appendix E—Form of 15c2-12 Undertaking

## SELECTED INFORMATION RELATING TO THE SERIES 2019 BONDS

The following information is furnished solely to provide limited introductory information regarding the terms of the Series 2019 Bonds and does not purport to be comprehensive. A summary of such terms in chart form appears as Appendix B to this Official Statement. All such information is qualified in its entirety by reference to the more detailed descriptions appearing in this Official Statement and should be read together therewith. Certain terms used in the following selected information are defined under "CERTAIN DEFINITIONS." The offering of the Series 2019 Bonds is made only by means of this entire Official Statement. No person is authorized to make offers to sell, or solicit offers to buy, Series 2019 Bonds unless this entire Official Statement is delivered in connection therewith.

### General

The Series 2019 Bonds will mature on December 1, 2049. The term of the Series 2019 Bonds will be divided into consecutive Interest Rate Periods at the direction of the Company, during which the Series 2019 Bonds may bear interest at a Daily Interest Rate, a Weekly Interest Rate, or Commercial Paper Term Rates applicable to each Series 2019 Bond or a Long-Term Interest Rate.

The initial Interest Rate Period for the Series 2019 Bonds will be a Daily Interest Rate Period. Fifth Third Securities, Inc. has been appointed initial Remarketing Agent with respect to the Series 2019 Bonds. The initial Interest Payment Date shall be January 8, 2020.

### Daily Interest Rate Period

Interest Rate .....	<p>The interest rate for each Business Day will be established by the Remarketing Agent on that Business Day. The interest rate for a day that is not a Business Day will be the same as the interest rate for the preceding Business Day.</p> <p>The interest rate will be the minimum rate that the Remarketing Agent determines would permit the sale of the Series 2019 Bonds at 100% of their principal amount.</p> <p>Interest will be calculated on a 365/366-day year and the actual number of days elapsed.</p>
Interest Payment.....	<p>Interest will accrue on a calendar month basis and will be payable on the fifth Business Day of each month.</p>



Purchase of Series 2019 Bonds Upon Demand .....	Owners may demand purchase of Series 2019 Bonds on any Business Day by giving an irrevocable notice by 11:00 a.m., New York City time.
Optional Redemption .....	Series 2019 Bonds will be redeemable, upon 30 days' notice, at the option of the Company, at a price equal to 100% of their principal amount plus accrued interest on any Business Day.
Change of Interest Rate Period .....	At any time, the Interest Rate Period for the Series 2019 Bonds may be adjusted from a Daily Interest Rate Period to a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period or a Long-Term Interest Rate Period. Notice to the Owners of the Series 2019 Bonds will be given at least 15 days prior to the effective date of the new Interest Rate Period.
Mandatory Tender for Purchase.....	The Series 2019 Bonds are subject to mandatory tender for purchase on the effective date of any change in the Interest Rate Period.

### **Weekly Interest Rate Period**

Interest Rate .....	<p>The interest rate for each seven-day period, Wednesday through Tuesday, will be established by the Remarketing Agent no later than the Business Day preceding each Wednesday.</p> <p>The interest rate will be the minimum rate that the Remarketing Agent determines would permit the sale of the Series 2019 Bonds at a price equal to 100% of their principal amount.</p> <p>Interest will be calculated on a 365/366-day year and the actual number of days elapsed.</p>
Interest Payment.....	Interest will accrue on a monthly basis and will be payable on the first Wednesday of each month.

Purchase of Series 2019 Bonds Upon Demand .....	Owners may demand purchase of Series 2019 Bonds on any Business Day by giving at least seven days' irrevocable notice to the Tender Agent of the day of purchase.
Optional Redemption .....	Series 2019 Bonds will be redeemable, upon 30 days' notice, at the option of the Company, at a price equal to 100% of their principal amount plus accrued interest on any Business Day.
Change of Interest Rate Period .....	At any time, the Interest Rate Period for the Series 2019 Bonds may be adjusted from a Weekly Interest Rate Period to a Daily Interest Rate Period, a Commercial Paper Interest Rate Period or a Long-Term Interest Rate Period. Notice to the Owners of the Series 2019 Bonds will be given at least 15 days prior to the effective date of the new Interest Rate Period.
Mandatory Tender for Purchase.....	The Series 2019 Bonds are subject to mandatory tender for purchase on the effective date of any change in the Interest Rate Period.

### **Commercial Paper Interest Rate Period**

Interest Periods and Rates for Each Series 2019 Bond .....	A Commercial Paper Interest Rate Period will be comprised, for each Series 2019 Bond, of a series of consecutive and individual Commercial Paper Terms. Each Commercial Paper Term will be not less than one nor more than 270 days. Each Commercial Paper Term will commence on a Business Day (the "Commercial Paper Date") and end on a day preceding a Business Day. During each Commercial Paper Term for each Series 2019 Bond, such Series 2019 Bond will bear interest at a fixed rate (the "Commercial Paper Term Rate"). Each Series 2019 Bond may have a different Commercial Paper Term and Commercial Paper Term Rate.
Interest Rate (Commercial Paper Term Rate).....	The Commercial Paper Term Rate for each Commercial Paper Term for each Series



2019 Bond will be established by the Remarketing Agent not later than the Commercial Paper Date for such Commercial Paper Term. The Commercial Paper Term Rate for each Commercial Paper Term for each Series 2019 Bond will be the minimum rate that the Remarketing Agent determines would permit the sale of such Series 2019 Bond at a price equal to 100% of its principal amount on the Commercial Paper Date.

Interest will be calculated on a 365/366-day year and the actual number of days elapsed.

Interest Payment.....

Interest will accrue from each Commercial Paper Date for each Series 2019 Bond through and including the last day of the related Commercial Paper Term and will be payable on the day after the last day of such Commercial Paper Term, upon presentation of such Series 2019 Bond to the Tender Agent.

Optional Redemption.....

Each Series 2019 Bond will be redeemable, upon 30 days' notice, at the option of the Company, at a price equal to 100% of its principal amount on the day after the last day of each Commercial Paper Term for such Series 2019 Bond.

Change of Interest Rate Period .....

On the day after the last day of any Commercial Paper Term for a Series 2019 Bond, the Interest Rate Period for such Series 2019 Bond may be adjusted from a Commercial Paper Interest Rate Period to a Daily Interest Rate Period, a Weekly Interest Rate Period or a Long-Term Interest Rate Period. Notice to the Owner of such Series 2019 Bond will be given at least 15 days prior to the effective date of the new Interest Rate Period.

Mandatory Tender for Purchase.....	Each Series 2019 Bond will be purchased on the Business Day after the last day of each Commercial Paper Term with respect to such Series 2019 Bond.
------------------------------------	---

**Long-Term Interest Rate Period**

Interest Rate .....	The interest rate for each Long-Term Interest Rate Period will be established by the Remarketing Agent not later than the first day of that period.
---------------------	---

The interest rate will be the minimum rate that the Remarketing Agent determines would permit the sale of the Series 2019 Bonds at a price equal to 100% of their principal amount.

Interest will be calculated on a 360-day year consisting of twelve 30-day months.

Interest Payment.....	Interest will be payable the fifth day of the calendar month that is six months after the calendar month in which the adjustment date occurs and the fifth day of the calendar month every six months after each such payment date thereafter until the end of such Long-Term Interest Rate Period.
-----------------------	---

Optional Redemption .....	Series 2019 Bonds will be redeemable, upon 30 days' notice, at the option of the Company, after the no-call period as described herein. Series 2019 Bonds will also be redeemable upon 30 days' notice, at the option of the Company, upon the occurrence of certain extraordinary events as described herein, at the principal amount thereof, plus accrued interest as described herein.
---------------------------	--

Change of Interest Rate Period .....	The Interest Rate Period may be adjusted from a Long-Term Interest Rate Period to a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period or another Long-Term Interest Rate Period. The effective date for
--------------------------------------	--



such change must be the day after the end of the Long-Term Interest Rate Period or a day on which the Series 2019 Bonds could be redeemed at the option of the Company. Notice to the Owners of the Series 2019 Bonds will be given at least 15 days prior to the effective date (30 days if the effective date is not the day after the originally scheduled last day of the Long-Term Interest Rate Period).

Mandatory Tender for Purchase..... The Series 2019 Bonds are subject to mandatory tender for purchase on the first day of each Interest Rate Period.

#### **Length of Interest Rate Periods**

Each Commercial Paper Interest Rate Period, Daily Interest Rate Period and Weekly Interest Rate Period will continue until the date on which the Company determines that a different Interest Rate Period will begin. Each Long-Term Interest Rate Period shall be for a term selected by the Company, which shall be one year or more. The Company may also specify a succession of Long-Term Interest Rate Periods. Each Commercial Paper Term within a Commercial Paper Interest Rate Period will be for a term of 270 days or less.

## CERTAIN DEFINITIONS

As used in this Official Statement:

“Business Day” means any day other than (i) a Saturday or Sunday and (ii) a day on which banks located in the cities in which the Principal Offices of the Trustee, the Remarketing Agent or the Tender Agent are located, are required or authorized to remain closed and on which the New York Stock Exchange is closed.

“Commercial Paper Interest Rate Period” means each period, comprised of Commercial Paper Terms, during which Commercial Paper Term Rates are in effect.

“Commercial Paper Term” means, with respect to any Series 2019 Bond, each period established in accordance with the Indenture during which such Series 2019 Bond shall bear interest at a Commercial Paper Term Rate.

“Commercial Paper Term Rate” means, with respect to each Series 2019 Bond, a fixed, non-variable interest rate on such Bond established periodically in accordance with the Indenture.

“Daily Interest Rate” means a variable interest rate on the Series 2019 Bonds established in accordance with the Indenture.

“Daily Interest Rate Period” means each period during which a Daily Interest Rate is in effect.

“Favorable Opinion” means an opinion of counsel nationally recognized on the subject of, and qualified to render approving legal opinions on the issuance of, municipal bonds, acceptable to the Company, the Trustee and the Issuer, to the effect that the action proposed to be taken is authorized or permitted by the laws of the State of Mississippi and the Indenture and will not adversely affect any exclusion from gross income for federal income tax purposes of interest on the Series 2019 Bonds.

“Interest Accrual Date” means (i) with respect to any Daily Interest Rate Period, the first day thereof and, thereafter, the first day of each calendar month during that Daily Interest Rate Period, (ii) with respect to any Weekly Interest Rate Period, the first day thereof and, thereafter, the first Wednesday of each month during that Weekly Interest Rate Period, (iii) with respect to any Long Term Interest Rate Period, the first day thereof and, thereafter, each Interest Payment Date in respect thereof and (iv) with respect to each Commercial Paper Term, the first day thereof.

“Interest Payment Date” means (i) with respect to any Daily Interest Rate Period, the fifth Business Day of each calendar month, (ii) with respect to any Weekly Interest Rate Period, the first Wednesday of each calendar month, or, if such first Wednesday shall not be a Business Day, the next succeeding Business Day, (iii) with respect to any Long Term Interest Rate Period, the fifth day of the calendar month that is six months after the calendar month in which the adjustment to any Long-Term Interest Rate Period occurs and the fifth day of the calendar month every six months after each such payment date thereafter until the end of such Long-Term



Interest Rate Period, (iv) with respect to any Commercial Paper Term, the day next succeeding the last day thereof, (v) with respect to each Interest Rate Period, the day next succeeding the last day thereof and (vi) the Maturity Date.

“Interest Rate Period” means any Daily Interest Rate Period, any Weekly Interest Rate Period, any Commercial Paper Interest Rate Period or any Long-Term Interest Rate Period.

“Long-Term Interest Rate” means, with respect to each Series 2019 Bond, a fixed, non-variable interest rate on such Series 2019 Bond established in accordance with the Indenture.

“Long-Term Interest Rate Period” means each period during which a Long-Term Interest Rate is in effect.

“Owner” means the person or entity in whose name any Series 2019 Bond is registered upon the registration books for the Series 2019 Bonds.

“Principal Office” of the Trustee, Tender Agent, Remarketing Agent or Registrar, means the address of such party listed under “Addresses of Certain Parties” in this Official Statement, or such other address as is established or designated as such pursuant to the Indenture.

“Record Date” means (a) with respect to any Interest Payment Date in respect of any Daily Interest Rate Period, the last Business Day of each calendar month or, in the case of the last Interest Payment Date in respect of a Daily Interest Rate Period, the Business Day immediately preceding such Interest Payment Date, (b) with respect to any Interest Payment Date in respect of any Weekly Interest Rate Period, the Business Day next preceding each Interest Payment Date, (c) with respect to any Interest Payment Date in respect of any Commercial Paper Term, the Business Day immediately preceding such Interest Payment Date, and (d) with respect to any Interest Payment Date in respect of any Long Term Interest Rate Period, the 15th day (whether or not a Business Day) immediately preceding such Interest Payment Date or, in the event that an Interest Payment Date shall occur less than 15 days after the first day of a Long Term Interest Rate Period, such first day.

“Trust Estate” means the property and rights assigned by the Issuer to the Trustee in the granting clauses of the Indenture.

“Weekly Interest Rate” means a variable interest rate on the Series 2019 Bonds established in accordance with the Indenture.

“Weekly Interest Rate Period” means each period during which a Weekly Interest Rate is in effect.

**\$55,000,000**  
**Mississippi Business Finance Corporation**  
**Revenue Bonds**  
**(Gulf Power Company Project),**  
**Series 2019**

**INTRODUCTORY STATEMENT**

This Official Statement sets forth certain information with respect to the issuance by the Mississippi Business Finance Corporation (the “Issuer”) of \$55,000,000 aggregate principal amount of Mississippi Business Finance Corporation Revenue Bonds (Gulf Power Company Project), Series 2019 (the “Series 2019 Bonds”). The Issuer is a public corporation of the State of Mississippi organized and chartered for the purpose of furthering the economic development of the State of Mississippi. The Series 2019 Bonds will bear interest and will be subject to prior redemption as set forth herein, will mature on the date set forth on the cover page hereof, shall be purchased at the option of their Owners or upon mandatory tender, and shall have such other terms as are described herein under the heading “THE SERIES 2019 BONDS.”

The proceeds of the Series 2019 Bonds will be used, together with funds provided by Gulf Power Company (the “Company”), to (i) finance or refinance, in whole or in part, the Company’s share of the cost of acquisition, construction, installation and equipping of additions, extensions and improvements to certain sewage or solid waste disposal facilities (the “Project”) at Plant Daniel Units 1 and 2 and common facilities associated therewith (collectively, the “Plant”); and (ii) pay certain costs of issuance of the Series 2019 Bonds, all as more specifically described in the Agreement (defined below).

Pursuant to a Loan Agreement, dated as of December 1, 2019 (the “Agreement”) by and between the Issuer and the Company, the Issuer will lend the net proceeds from the sale of the Series 2019 Bonds to the Company. The Company is obligated under the Agreement to pay to the Issuer amounts sufficient to pay amounts due on the Series 2019 Bonds when the same are due and payable.

The Series 2019 Bonds will be issued under a Trust Indenture, dated as of December 1, 2019 (the “Indenture”), by and between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), and under resolutions of the Issuer.

THE SERIES 2019 BONDS AND PREMIUM, IF ANY, AND INTEREST THEREON ARE LIMITED AND SPECIAL OBLIGATIONS OF THE ISSUER AND PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS DERIVED FROM THE LOAN AGREEMENT (DEFINED HEREIN) AND ARE SECURED AS SET FORTH IN THE INDENTURE. THE SERIES 2019 BONDS AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE STATE OF MISSISSIPPI OR ANY POLITICAL SUBDIVISION THEREOF, BUT THE SERIES 2019 BONDS SHALL BE PAYABLE SOLELY FROM THE REVENUES PROVIDED THEREFOR AS HEREIN DESCRIBED, AND THE ISSUER IS NOT OBLIGATED TO PAY THE PRINCIPAL OF THE SERIES 2019 BONDS, OR THE PREMIUM, IF ANY, THEREON OR INTEREST THEREON OR OTHER AMOUNTS DUE WITH RESPECT THERETO EXCEPT



FROM THE TRUST ESTATE PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT OF THE ISSUER OR THE STATE OF MISSISSIPPI NOR THE TAXING POWER OF THE STATE OF MISSISSIPPI OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE PREMIUM, IF ANY, ON OR INTEREST ON THE SERIES 2019 BONDS, OR THE COSTS INCIDENTAL THERETO. NO COVENANT OR AGREEMENT CONTAINED IN THE INDENTURE SHALL BE DEEMED TO BE A COVENANT OR AGREEMENT OF ANY MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE ISSUER IN HIS INDIVIDUAL CAPACITY, AND NO MEMBER OF THE BOARD OF DIRECTORS OF THE ISSUER NOR ANY OFFICER OF THE ISSUER EXECUTING THE SERIES 2019 BONDS SHALL BE LIABLE PERSONALLY ON THE SERIES 2019 BONDS OR BE SUBJECT TO ANY PERSONAL LIABILITY IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2019 BONDS.

This Official Statement contains a brief description of the Series 2019 Bonds and summaries of certain provisions of the Agreement and the Indenture. Information with respect to the Company, including certain financial statements, are set forth in Appendices A and A-1 to this Official Statement and has been furnished by the Company and contains information concerning the Company. Appendix B to this Official Statement contains a summary of the terms of the Series 2019 Bonds. The descriptions and summaries of documents herein do not purport to be comprehensive or definitive, and reference is made to each such document for the complete terms and conditions. All statements herein are qualified in their entirety by reference to each such document and, with respect to the enforceability of certain rights and remedies, to laws and principles of equity relating to or affecting generally the enforcement of creditors' rights. Terms not defined herein shall have the meanings set forth in the respective documents. Copies of the Agreement and the Indenture are available for inspection at the offices of the Trustee.

## THE ISSUER

### Organization and Powers

The Issuer, created in 1983, is a public corporation of the State organized and chartered for the purpose of furthering the economic development of the State. The Issuer is composed of twenty-five (25) members, either appointed or serving by virtue of ex officio designation. Appointments are for terms of six years. Ex officio members serve so long as they occupy the position, which entitles them to membership. From this membership there is elected a nine-member Board of Directors, including a President and Vice President. The current members of the Board of Directors and the expiration dates of their respective terms as Directors are:

Name	Occupation	Term
Carolyn Boteler	Owner, Temp Staff	8/1/19 – 7/31/20
Jabari Edwards	Owner, J5GBL Construction Co.	8/1/19 – 7/31/20
William L. Freeman, Jr.	Retired Bank President	8/1/19 – 7/31/20
William Griffin	Owner, Griffin & Griffin Exploration LLC	8/1/19 – 7/31/20



Gary Harkins	Real Estate Developer	8/1/19 – 7/31/20
Joel Horton	Retired Bank President	8/1/19 – 7/31/20
Bobby James	Operations Manager, Atmos Energy	8/1/19 – 7/31/20
William D. Sones	Bank Chairman	8/1/19 – 7/31/20
Mark Wiggins	Retired Business Owner	8/1/19 – 7/31/20

The operations of the Issuer are administered by E.F. “Buddy” Mitcham, Executive Director. Mr. Mitcham is a 1970 graduate of Mississippi State University with a degree in Finance.

The provisions of section 57-10-201 *et seq.* of the Mississippi Code of 1972, as amended and supplemented (the “Act”) authorizes the Issuer to, among other things, provide financial assistance to businesses and companies in the State by providing loans and other assistance to such companies, thereby encouraging the investment of private capital in these companies and to finance such assistance by the issuance of revenue bonds. The Series 2019 Bonds are being issued pursuant to resolutions of the Issuer duly adopted on August 14, 2019 and November 13, 2019 pursuant to the authority of the Act and the Constitution and laws of the State.

**THE SERIES 2019 BONDS AND INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE FROM THE FUNDS PROVIDED FOR IN THE AGREEMENT AND THE INDENTURE. THE SERIES 2019 BONDS SHALL NOT CONSTITUTE INDEBTEDNESS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR PURCHASE PRICE, PREMIUM, IF ANY, OR INTEREST OF THE SERIES 2019 BONDS. THE ISSUER HAS NO TAXING POWER. See “THE SERIES 2019 BONDS” herein.**

The mailing address of the Issuer is 735 Riverside Drive, Suite 300, Jackson, Mississippi. The telephone number of the Issuer is (601) 355-6232.

#### Indebtedness of the Issuer

The Issuer is authorized to issue and may issue other series of bonds and notes secured by instruments separate and apart from the Indenture. The owners of such bonds and notes will have no claim on the assets, funds, or revenues of the Issuer securing the Series 2019 Bonds. The holders of the Series 2019 Bonds will have no claim on the assets, funds, or revenues of the Authority securing such other bonds and notes.

With respect to additional indebtedness of the Issuer, the Issuer intends to enter into separate agreements for the purpose of providing financing for eligible projects. Issues which

may be sold by the Issuer in the future will be created under separate and distinct indentures or resolutions and secured by instruments, properties, and revenues separate from those securing the Series 2019 Bonds.

EXCEPT FOR INFORMATION CONCERNING THE ISSUER IN THIS SECTION, NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT HAS BEEN SUPPLIED OR VERIFIED BY THE ISSUER, AND THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

## **THE SERIES 2019 BONDS**

### **General**

Interest on the Series 2019 Bonds will accrue from their date of delivery, and the Series 2019 Bonds will mature on the date specified on the cover page hereof, subject to redemption prior to maturity as hereinafter described.

Series 2019 Bonds may be registered as transferred or exchanged for other Series 2019 Bonds in authorized denominations at the Principal Office of U.S. Bank National Association in Atlanta, Georgia. During a Daily Interest Rate Period or a Weekly Interest Rate Period, the authorized denominations will be \$100,000 and any integral multiple of \$5,000 in excess thereof. During a Commercial Paper Interest Rate Period, the authorized denominations will be \$100,000 and any integral multiple of \$1,000 in excess of \$100,000. During a Long-Term Interest Rate Period, the authorized denominations will be \$5,000 and any integral multiple of \$5,000. Registrations of exchange and transfers shall be made without charge to the Owners, except for any applicable tax, fee or governmental charge required. Except in connection with the remarketing of Series 2019 Bonds, the Registrar shall not be obligated to make any such registration of exchange or transfer of Series 2019 Bonds, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Series 2019 Bonds for such redemption or after any such Series 2019 Bond or any portion thereof has been called for redemption.

Trustee. U.S. Bank National Association is the Trustee. As long as no event of default under the Indenture shall have occurred and be continuing, the Trustee may be removed or replaced by the Issuer at the direction of the Company.

Tender Agent, Paving Agent and Registrar. U.S. Bank National Association is the Tender Agent/Paying Agent/Registrar. The Tender Agent/Paying Agent/Registrar may be removed or replaced by the Company.

Remarketing Agent. Fifth Third Securities, Inc. ("Fifth Third") has been appointed initial Remarketing Agent with respect to the Series 2019 Bonds under the Indenture. The term of appointment of any Remarketing Agent shall expire, and the Company shall appoint a successor Remarketing Agent, upon the adjustment of the interest rate determination method for the Series 2019 Bonds; provided, however, that the Company may appoint the then current Remarketing Agent as the successor Remarketing Agent. In addition, the Company may from time to time remove and replace the Remarketing Agent.



## Book-Entry System

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2019 Bonds. The Series 2019 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for the Series 2019 Bonds, in the aggregate principal amount of such Bonds, and will be deposited with the Trustee as custodian for DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the SEC. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information contained on this Internet site is not incorporated herein by reference.

Purchases of the Series 2019 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2019 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2019 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2019 Bonds, except in the event that use of the book-entry system for the Series 2019 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2019 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other



name as may be requested by an authorized representative of DTC. The deposit of Series 2019 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2019 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2019 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2019 Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Series 2019 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2019 Bond documents. For example, Beneficial Owners of Series 2019 Bonds may wish to ascertain that the nominee holding the Series 2019 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Trustee and request that copies of notices be provided directly to them. The Issuer, the Company, the Remarketing Agent, the Underwriter and the Trustee will not have any responsibility or obligation to such Direct and Indirect Participants or the persons for whom they act as nominees with respect to the Series 2019 Bonds.

Redemption notices will be sent to DTC. If less than all of the Series 2019 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2019 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2019 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Series 2019 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee, on payable dates in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.



A Beneficial Owner will give notice to elect to have its Series 2019 Bonds purchased or tendered, through its Participant, to the Tender Agent, and will effect delivery of such Series 2019 Bonds by causing the Direct Participant to transfer the Participant's interest in the Series 2019 Bonds, on DTC's records, to the Tender Agent. The requirement for physical delivery of Series 2019 Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Series 2019 Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Series 2019 Bonds to the Tender Agent's DTC account.

DTC may discontinue providing its services as securities depository with respect to the Series 2019 Bonds at any time by giving reasonable notice to the Issuer or the Trustee. In addition, the Company may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). Under such circumstances, in the event that a successor securities depository is not obtained, Bond certificates are required to be printed and delivered.

The Issuer, the Trustee, the Company, the Remarketing Agent and the Underwriter shall not have any responsibility or obligation to any Direct or Indirect Participant, any Beneficial Owner or any other person claiming a beneficial ownership interest in the Series 2019 Bonds under or through DTC or any DTC Participant, or any other person which is not shown on the registration books of the Trustee as being a holder, with respect to the accuracy of any records maintained by DTC or any Direct or Indirect Participant; the payment by DTC or any Direct or Indirect Participant of any amount in respect of the principal of, purchase price, premium, if any, or interest on the Series 2019 Bonds; any notice which is permitted or required to be given to owners under the Indenture; the selection by DTC or any Direct or Indirect Participant of any person to receive payment in the event of a partial redemption of the Series 2019 Bonds; any consent given or other action taken by DTC as an owner; or any other procedures or obligations of DTC under the book-entry system.

So long as Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the registered owner of the Series 2019 Bonds, as nominee of DTC, references herein to the holders or owners or registered holders or registered owners of the Series 2019 Bonds means Cede & Co., as aforesaid, and does not mean the beneficial owners of the Series 2019 Bonds.

The foregoing description of the procedures and record keeping with respect to beneficial ownership interests in the Series 2019 Bonds, payment of principal, interest and other payments on the Series 2019 Bonds to Direct and Indirect Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in such Series 2019 Bonds and other related transactions by and between DTC, the Direct and Indirect Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters, and neither the Direct nor Indirect Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC.

None of the Issuer, the Company, the Underwriter or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account



of beneficial interests in any Series 2019 Bond or for maintaining, supervising or reviewing any records relating to such beneficial interests.

### **Security for the Series 2019 Bonds**

The Series 2019 Bonds are payable from the Trust Estate pledged to the payment of the Series 2019 Bonds under the Indenture, which includes payments required to be made by the Company pursuant to the Agreement. All rights of the Issuer under the Agreement have been pledged and assigned by the Issuer to the Trustee, except certain rights to indemnification and reimbursement of expenses.

Any Series 2019 Bonds that bear interest at a Long-Term Interest Rate may, at the Company's discretion, also be secured by additional collateral or other credit enhancement as provided in the Agreement and the Indenture.

THE SERIES 2019 BONDS AND PREMIUM, IF ANY, AND INTEREST THEREON ARE LIMITED AND SPECIAL OBLIGATIONS OF THE ISSUER AND PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS DERIVED FROM THE LOAN AGREEMENT (DEFINED HEREIN) AND ARE SECURED AS SET FORTH IN THE INDENTURE. THE SERIES 2019 BONDS AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE STATE OF MISSISSIPPI OR ANY POLITICAL SUBDIVISION THEREOF, BUT THE SERIES 2019 BONDS SHALL BE PAYABLE SOLELY FROM THE REVENUES PROVIDED THEREFOR AS HEREIN DESCRIBED, AND THE ISSUER IS NOT OBLIGATED TO PAY THE PRINCIPAL OF THE SERIES 2019 BONDS, OR THE PREMIUM, IF ANY, THEREON OR INTEREST THEREON OR OTHER AMOUNTS DUE WITH RESPECT THERETO EXCEPT FROM THE TRUST ESTATE PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT OF THE ISSUER OR THE STATE OF MISSISSIPPI NOR THE TAXING POWER OF THE STATE OF MISSISSIPPI OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE PREMIUM, IF ANY, ON OR INTEREST ON THE SERIES 2019 BONDS, OR THE COSTS INCIDENTAL THERETO. NO COVENANT OR AGREEMENT CONTAINED IN THE INDENTURE SHALL BE DEEMED TO BE A COVENANT OR AGREEMENT OF ANY MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE ISSUER IN HIS INDIVIDUAL CAPACITY, AND NO MEMBER OF THE BOARD OF DIRECTORS OF THE ISSUER NOR ANY OFFICER OF THE ISSUER EXECUTING THE SERIES 2019 BONDS SHALL BE LIABLE PERSONALLY ON THE SERIES 2019 BONDS OR BE SUBJECT TO ANY PERSONAL LIABILITY IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2019 BONDS.

### **Interest Rate Periods**

The term of the Series 2019 Bonds will be divided into consecutive Interest Rate Periods at the direction of the Company. Each Interest Rate Period will be a Daily Interest Rate Period, Weekly Interest Rate Period, Commercial Paper Interest Rate Period or Long-Term Interest Rate Period.



The initial Interest Rate Period for the Series 2019 Bonds will be a Daily Interest Rate Period. The interest rate or rates applicable during each subsequent Interest Rate Period will be determined as described below.

### **Determination of Interest Rates**

General. During or with respect to each Interest Rate Period, the Remarketing Agent will determine the interest rate or rates applicable to the Series 2019 Bonds, which will be the minimum interest rate or rates which, if borne by the Series 2019 Bonds, would enable the Remarketing Agent to sell the Series 2019 Bonds on the applicable date at a price (without regard to accrued interest) equal to the principal amount thereof. The Remarketing Agent will base that determination on its examination of tax-exempt obligations comparable to the Series 2019 Bonds known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions. The Indenture sets forth certain fall-back rates if, for any reason, an interest rate or rates for the Series 2019 Bonds during any Interest Rate Period is not so determined by the Remarketing Agent. Except during a Long-Term Interest Rate Period ending on the day immediately preceding the Maturity Date, the Daily, Weekly, Commercial Paper or Long-Term Interest Rate shall not exceed 12% per annum.

Commencing on the first day of each Interest Rate Period and ending on the day preceding the effective date of the next Interest Rate Period, the Series 2019 Bonds will bear interest at a Daily Interest Rate, a Weekly Interest Rate, a Commercial Paper Term Rate or a Long-Term Interest Rate, all determined as set forth below:

Daily Interest Rate. The Daily Interest Rate will be determined by the Remarketing Agent on each Business Day for that Business Day. The Daily Interest Rate for any day that is not a Business Day will be the same as the Daily Interest Rate in effect for the preceding Business Day. If for any reason, the Daily Interest Rate cannot be determined for any Business Day by the Remarketing Agent, then (1) the Daily Interest Rate for such day shall be the same as the Daily Interest Rate for the immediately preceding day if the Daily Interest Rate for such preceding day was determined by the Remarketing Agent or (2) if no Daily Interest Rate for the immediately preceding day was determined by the Remarketing Agent or if the Daily Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then in accordance with certain fall-back rates described in the Indenture.

Weekly Interest Rate. The Weekly Interest Rate will be determined by the Remarketing Agent no later than the Business Day preceding the first day of each Weekly Interest Rate Period and thereafter no later than the Business Day preceding Wednesday of each week during the Weekly Interest Rate Period. If, for any reason, the Weekly Interest Rate cannot be determined for any week by the Remarketing Agent, then (1) the Weekly Interest Rate for such week shall be the same as the Weekly Interest Rate for the immediately preceding week or (2) if no Weekly Interest Rate for the immediately preceding week was determined by the Remarketing Agent or if the Weekly Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then in accordance with certain fall-back rates described in the Indenture.



Commercial Paper Terms and Commercial Paper Term Rate. During a Commercial Paper Interest Rate Period, each Series 2019 Bond will bear interest at the Commercial Paper Term Rate for that Series 2019 Bond through the day preceding the effective date of the next Commercial Paper Term for that Series 2019 Bond or the day preceding the next Interest Rate Period. Each Series 2019 Bond may have a different Commercial Paper Term and Commercial Paper Term Rate. Each Commercial Paper Term and Commercial Paper Term Rate for each Series 2019 Bond will be determined by the Remarketing Agent no later than the first day of the Commercial Paper Term.

Each Commercial Paper Term will be a period of not more than 270 days determined by the Remarketing Agent (taking into account certain factors set forth in the Indenture) to be the period which, together with all other Commercial Paper Terms for Series 2019 Bonds then outstanding, will result in the lowest overall interest expense on the Series 2019 Bonds over the next 270 days. However, the Commercial Paper Term must end on either a day which precedes a Business Day or the day preceding the Maturity Date of the Series 2019 Bonds. If for any reason a Commercial Paper Term for any Series 2019 Bond cannot be so determined by the Remarketing Agent, it will extend by one Business Day (or until the earlier stated maturity of the Series 2019 Bonds) automatically until the Remarketing Agent is able to set the rate and, if in that instance the Remarketing Agent fails for whatever reason to determine the interest rate for such Series 2019 Bond, then the interest rate for such Series 2019 Bond for that Commercial Paper Interest Rate Period shall be the interest rate in effect for the preceding Commercial Paper Interest Rate Period.

Long-Term Interest Rate. During each Long-Term Interest Rate Period, commencing and ending on the date or dates specified or determined as described below, and during each successive Long-Term Interest Rate Period, if any, so determined, the Long-Term Interest Rate will be determined by the Remarketing Agent on the effective date of the Long-Term Interest Rate Period or on a Business Day selected by the Remarketing Agent not more than 30 days prior to such effective date. In the event of an adjustment from a Commercial Paper Interest Rate Period which results in the commencement of the Long-Term Interest Rate Period on two or more dates, a separate Long-Term Interest Rate will be determined by the Remarketing Agent effective as of each such date with respect to the particular Series 2019 Bonds adjusting to the Long-Term Interest Rate Period on such date.

Payment of Principal and Interest. The principal of and premium, if any, on the Series 2019 Bonds shall be payable to the Owners of the Series 2019 Bonds upon presentation and surrender thereof at the Principal Office of the Trustee. Interest shall be payable by the Paying Agent by checks mailed to the Owners as of the Record Date in respect thereof or (except for interest in respect of a Long-Term Interest Rate Period) in immediately available funds by deposit to an account with the Paying Agent or by wire transfer to the accounts with commercial banks located within the United States of the Owners which shall have provided deposit or wire transfer instructions to the Paying Agent at least two Business Days prior to such Record Date, but, in the case of interest payable in respect of a Commercial Paper Term, only upon delivery of the Series 2019 Bond to the Tender Agent. So long as the Series 2019 Bonds are registered in



the name of Cede & Co., payments of principal, premium, if any, and interest will be made as described above under “THE SERIES 2019 BONDS – Book-Entry System.”

Interest will be computed, in the case of a Long-Term Interest Rate Period, on the basis of a 360-day year consisting of twelve 30-day months and, in the case of any other Interest Rate Period, on the basis of a 365-or 366-day year, as appropriate, and the actual number of days elapsed.

Each Series 2019 Bond will bear interest from and including the Interest Accrual Date preceding the date of authentication thereof or, if that date of authentication is an Interest Accrual Date to which interest on the Series 2019 Bonds has been paid in full or duly provided for or the date of initial authentication of the Series 2019 Bonds, from that date of authentication. During each Interest Rate Period, interest on the Series 2019 Bonds will accrue and be payable as follows:

Daily Interest Rate Period. Interest on the Series 2019 Bonds will accrue on a calendar month basis and will be payable on the fifth Business Day of each month.

Weekly Interest Rate Period. Interest on the Series 2019 Bonds will accrue on a monthly basis and will be payable on the first Wednesday of each month.

Commercial Paper Interest Rate Period. Interest on each Series 2019 Bond will accrue from the first day of each Commercial Paper Term for such Series 2019 Bond through and including the last day of the Commercial Paper Term for such Series 2019 Bond and will be payable on the day after the last day of such Commercial Paper Term.

Long-Term Interest Rate Period. Interest on the Series 2019 Bonds will accrue from the Interest Payment Date through and including the day preceding the next Interest Payment Date and will be payable semiannually on the fifth day of the calendar month that is six months after the calendar month in which the adjustment to any Long-Term Interest Rate Period occurs and the fifth day of the calendar month every six months after each such payment date thereafter until the end of such Long-Term Interest Rate Period.

### **Adjustment of Interest Rate Period**

General. At any time, by written direction to the Trustee, the Registrar, the Tender Agent, the Remarketing Agent, the Company may elect to adjust the method of determining the interest rate with respect to the Series 2019 Bonds by adjusting to a different Interest Rate Period. That direction must specify the effective date of the new Interest Rate Period, which effective date must be a Business Day and may not be less than 15 days (unless the then current Interest Rate Period is a Long-Term Interest Rate Period and such Long-Term Interest Rate Period ends on a day prior to the day originally established as the last day thereof, in which case not less than 30 days) following the second Business Day after the receipt by the Trustee of the direction. A direction to adjust from an Interest Rate Period to another Interest Rate Period (other than one of a succession of Long-Term Interest Rate Periods of equal duration) must be accompanied by a Favorable Opinion. Commencing on the effective date of an adjustment to another Interest Rate Period, the Series 2019 Bonds will bear interest at the applicable interest rate as described above.



Adjustment to Long – Term Interest Rate Period. In connection with its election to adjust to a Long-Term Interest Rate Period, the Company must specify, among other things:

- (1) the effective date of the Long-Term Interest Rate Period; and
- (2) a date or dates on or prior to which Owners are required to deliver Series 2019 Bonds to be purchased (if other than the effective date).

The direction by the Company to adjust to a Long-Term Interest Rate Period also may specify that the initial Long-Term Interest Rate Period will be followed by one or more successive Long-Term Interest Rate Periods and the durations thereof.

If the Company designates successive Long-Term Interest Rate Periods, but does not, with respect to the second or any subsequent Long-Term Interest Rate Period, specify a date or dates on or prior to which Owners are required to deliver Series 2019 Bonds to be purchased, all as contemplated above, the Company may later specify any of such information not previously specified with respect to such Long-Term Interest Rate Period.

Adjustment From Long – Term Interest Rate Period. At any time during a Long-Term Interest Rate Period, the Company may elect that the Series 2019 Bonds no longer will bear interest at the Long-Term Interest Rate and instead will bear interest at a Daily Interest Rate, a Weekly Interest Rate, Commercial Paper Term Rates or a new Long-Term Interest Rate, as specified in such election. The effective date of an adjustment from a Long-Term Interest Rate Period must be the day after the last day of the Long-Term Interest Rate Period or a day on which the Series 2019 Bonds may be redeemed at the option of the Issuer, at the direction of the Company. The notice of such election must be given to the Owners not later than 30 days before the effective date of the new Interest Rate Period. Series 2019 Bonds will be subject to mandatory tender for purchase on such effective date at a purchase price equal to the optional redemption price which would have been applicable on that date.

If, by the Business Day preceding the fifteenth day (unless the then current Interest Rate Period shall be a Long-Term Interest Rate Period and such Long-Term Interest Rate Period shall end on a day prior to the day originally established as the last day thereof, in which case not less than 30 days) prior to the last day of any Long-Term Interest Rate Period, other than one of a succession of Long-Term Interest Rate Periods, the Company has not elected that the Series 2019 Bonds are to bear interest at a Daily Interest Rate, a Weekly Interest Rate, a Long-Term Interest Rate or Commercial Paper Term Rates, the next Interest Rate Period will be (a) if the Long-Term Interest Rate Period to expire is longer than one year in duration, a Weekly Interest Rate Period, so long as a Favorable Opinion of Bond Counsel shall be delivered or (b) if the Long-Term Interest Rate Period to expire is one year in duration, a Daily Interest Rate Period, so long as a Favorable Opinion of Bond Counsel shall be delivered.

Adjustment From Commercial Paper Interest Rate Period. At any time during a Commercial Paper Interest Rate Period, the Company may elect that Series 2019 Bonds no longer will bear interest at Commercial Paper Term Rates and will instead bear interest at a Daily Interest Rate, a Weekly Interest Rate or a Long-Term Interest Rate as specified in the election. That election also must specify whether the effective date of the new Interest Rate Period will be



(1) a single day for all Series 2019 Bonds, in which case the effective date will be the day after the earliest date on which all Commercial Paper Terms shall end as determined by the Remarketing Agent, or (2) different for each Series 2019 Bond, in which case the effective date will be the day after the last day of the Commercial Paper Term then in effect (or to be in effect) with respect to such Series 2019 Bond.

Notice to Owners of Adjustment of Interest Rate Period. The Registrar will be required to give notice by first-class mail of an adjustment of the Interest Rate Period to the Owners of the Series 2019 Bonds not less than 15 days (unless the then current Interest Rate Period is a Long-Term Interest Rate Period and such Long-Term Interest Rate Period ends on a day prior to the day originally established as the last day thereof, in which case not less than 30 days) prior to the effective date of the adjustment of the Interest Rate Period. That notice must state the following:

- (1) the effective date of the new Interest Rate Period; and
- (2) that the Series 2019 Bonds are subject to mandatory tender for purchase on the effective date, setting forth the applicable purchase price and the procedures of such purchase.

### **Determinations Binding**

The determination of the various interest rates and the bases therefor and the Commercial Paper Terms shall be conclusive and binding upon the Remarketing Agent, the Trustee, the Tender Agent, the Issuer, the Company and the Owners of the Series 2019 Bonds.

### **Purchase of Series 2019 Bonds**

The Series 2019 Bonds during any Daily or Weekly Interest Rate Period will be purchased on the demand of the Owners thereof, and will be subject to mandatory tender for purchase, at the times and subject to the conditions described below. Payment for Series 2019 Bonds purchased will be made by the close of business on the date specified for purchase, if the conditions for that purchase described below have been strictly complied with by the Owners thereof.

During any Daily or Weekly Interest Rate Period when the Series 2019 Bonds are registered in the name of Cede & Co., tenders of the Series 2019 Bonds will be effected by means of DTC's Delivery Order Procedures. See "THE SERIES 2019 BONDS — Book-Entry System." Notice of any such tender must be given to the Tender Agent in the form set forth in Appendix D to this Official Statement. If a beneficial owner of a Series 2019 Bond fails to cause its beneficial ownership of such Series 2019 Bond to be transferred to the DTC account of the Tender Agent by the deadlines specified below, such Series 2019 Bond shall not be purchased and the beneficial owner may be subject to damages as specified in such notice.

If the book entry system is discontinued, tendered Series 2019 Bonds must be accompanied by an instrument of transfer satisfactory to the Tender Agent, executed in blank by the Owner thereof or his duly authorized attorney, with such signature guaranteed by an "eligible guarantor institution" as defined by Rule 17Ad-15 promulgated under the Exchange Act. The Tender Agent may refuse to accept delivery of any Series 2019 Bond for which a proper



instrument of transfer has not been provided. Notice of tender for purchase of Series 2019 Bonds by the Owners thereof will be irrevocable, once given to the Tender Agent as described below. In the event that any Owner of a Series 2019 Bond giving notice of tender for purchase fails to deliver its Series 2019 Bond to the Tender Agent at the place and on the applicable date and the time specified below, or fails to deliver the Series 2019 Bond properly endorsed and provided that funds in the amount of the purchase price thereof are available for payment to such Owner at the date and the time specified below, from and after the date and time of that required delivery, (i) such Series 2019 Bond shall no longer be deemed to be outstanding under the Indenture, (ii) interest will no longer accrue thereon to such former Owner and (iii) funds in the amount of the purchase price of Series 2019 Bond, without interest, will be held by the Tender Agent for the benefit of such former Owner, to be paid on delivery (or proper endorsement) thereof to the Tender Agent

During Daily Interest Rate Period. During any Daily Interest Rate Period, any Series 2019 Bond or portion thereof in an authorized denomination will be purchased at the option of its Owner on any Business Day at a purchase price equal to the principal amount thereof, plus accrued interest from the Interest Accrual Date immediately preceding the date of purchase through the day immediately preceding the date of purchase, or, if the date of purchase is an Interest Accrual Date, at a purchase price equal to the principal amount thereof, payable in immediately available funds, upon delivery to the Tender Agent at its Principal Office, not later than 11:00 a.m., New York City time, on that Business Day, of an irrevocable written notice, or an irrevocable telephonic notice, promptly confirmed by telecopy or other writing, which states the principal amount of the Series 2019 Bond or such portion thereof and the date of purchase. For payment of such purchase price on the date specified in such notice, the Series 2019 Bond must be delivered, not later than 12:00 Noon, New York City time, on such Business Day (together with necessary endorsements) to the Tender Agent at its Principal Office.

During Weekly Interest Rate Period. During any Weekly Interest Rate Period, any Series 2019 Bond or portion thereof in an authorized denomination will be purchased at the option of its Owner on any Business Day at a purchase price equal to the principal amount thereof plus accrued interest, if any, from the Interest Accrual Date immediately preceding the date of purchase through the day immediately preceding the date of purchase, or, if the date of purchase is an Interest Accrual Date, at a purchase price equal to the principal amount thereof, payable in immediately available funds, upon the delivery to the Tender Agent at its Principal Office of an irrevocable written notice, or an irrevocable telephonic notice, promptly confirmed by telecopy or other writing, which states the principal amount of the Series 2019 Bond or such portion thereof and the date on which the Series 2019 Bond is to be purchased, which date must be a Business Day not prior to the seventh day after the date of the delivery of the notice to the Tender Agent. For payment of such purchase price on the date specified in such notice, the Series 2019 Bond must be delivered, not later than 12:00 Noon, New York City time, on the date specified in the notice (together with necessary endorsements) to the Tender Agent at its Principal Office.

During Commercial Paper Interest Rate Period – Mandatory Tender for Purchase on Day After the Last Day of Each Commercial Paper Term. On the Business Day after the last day of the Commercial Paper Term for a Series 2019 Bond, unless such day is the first day of a new Interest Rate Period (in which event such Series 2019 Bond will be subject to mandatory tender



for purchase as described under “Mandatory Tender for Purchase on First Day of Each Interest Rate Period”), such Series 2019 Bond will be purchased, at a purchase price equal to the principal amount thereof, payable in immediately available funds. For payment of such purchase price on such day, such Series 2019 Bond must be delivered (together with necessary endorsements) at or prior to 12:30 P.M., New York City time on such day, to the Tender Agent at its Principal Office. During any Commercial Paper Term, with respect to a Series 2019 Bond, the Owner of that Series 2019 Bond will not have the right to demand the purchase thereof.

Mandatory Tender for Purchase on First Day of Each Interest Rate Period. The Series 2019 Bonds will be subject to mandatory tender for purchase, at a purchase price equal to 100% of the principal amount thereof (or, if applicable, upon adjustment from a Long-Term Interest Rate Period prior to the expiration of such Long-Term Interest Rate Period, at a purchase price equal to the applicable optional redemption price), payable in immediately available funds, on the first day of the succeeding Interest Rate Period.

### **Purchase and Remarketing of Series 2019 Bonds**

On the date on which Series 2019 Bonds are required to be purchased, the Tender Agent shall purchase such Series 2019 Bonds with funds provided from the remarketing of such Series 2019 Bonds or by the Company pursuant to the Agreement. The Issuer has no obligation to provide any moneys whatsoever for the payment of the purchase price for the Series 2019 Bonds.

On the day of purchase of Series 2019 Bonds by the Tender Agent, the Remarketing Agent shall use its best efforts to sell such Series 2019 Bonds in accordance with the Indenture.

### **Redemption**

Optional Redemption During Daily or Weekly Interest Rate Period. On any Business Day during a Daily Interest Rate Period or a Weekly Interest Rate Period, the Series 2019 Bonds shall be subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at a redemption price equal to 100% of the principal amount thereof, plus accrued interest, if any, to the redemption date.

Optional Redemption During Commercial Paper Interest Rate Period. During any Commercial Paper Interest Rate Period, each Series 2019 Bond will be subject to optional redemption by the Issuer, at the direction of the Company, on the day after the last day of each Commercial Paper Term for that Series 2019 Bond, in whole or in part, at a redemption price equal to the principal amount thereof.

Optional Redemption During Long-Term Interest Rate Period. During any Long-Term Interest Rate Period, the Series 2019 Bonds are subject to optional redemption by the Issuer, at the direction of the Company (i) on the final Interest Payment Date for such Long-Term Interest Rate Period, at a redemption price equal to 100% of the principal amount thereof plus interest accrued, if any, to the redemption date, and (ii) prior to the end of the then current Long-Term Interest Rate Period, at any time during the redemption periods and at the redemption prices set forth below, plus interest accrued, if any, to the redemption date:



<u>Original Length of Current Long-Term Rate Period (Years)</u>	<u>Commencement of Redemption Period</u>	<u>Redemption Price as Percentage of Principal</u>
More than 10 years	Tenth anniversary of commencement of Long-Term Interest Rate Period	100%
Equal to or less than 10 years	Non-callable	Non-callable

If the Company has given notice of a change in the Long-Term Interest Rate Period or notice of an adjustment of the Interest Rate Period for the Series 2019 Bonds to the Long-Term Interest Rate Period and, at least one day prior to such change in the Long-Term Interest Rate Period or such adjustment the Company has provided (i) a certification of the Remarketing Agent to the Trustee that the foregoing schedule is not consistent with prevailing market conditions, (ii) evidence of approval by the Issuer of the revised redemption provisions described below, and (iii) a Favorable Opinion of Bond Counsel addressed to the Trustee that a change in the redemption provisions of the Series 2019 Bonds will not adversely affect the exclusion from gross income of interest on the Series 2019 Bonds for federal income tax purposes, the foregoing redemption periods and redemption prices may be revised, effective as of the date of such adjustment in the Long-Term Interest Rate Period or an adjustment to the Long-Term Interest Rate Period, as determined by the Remarketing Agent in its judgment, taking into account the then prevailing market conditions as set forth in such certification.

### **Extraordinary Optional Redemption**

During any Long-Term Interest Rate Period, the Series 2019 Bonds will be subject to redemption in whole, upon the optional prepayment by the Company of all the Loan Repayments (as defined below), at a redemption price of 100% of the principal amount thereof plus accrued interest to the date fixed for redemption, if:

- (a) the Company shall have determined that the continued operation of any portion of the Project, or the Plant of which the Project is a part, is impracticable, uneconomical or undesirable; or
- (b) all or substantially all of or any portion of the Project, or the Plant of which the Project is a part, shall have been condemned or taken by eminent domain; or
- (c) the operation by the Company of any portion of the Project, or the Plant of which the Project is a part, shall have been enjoined for a period of at least six consecutive months; or
- (d) as a result of any change in the Constitution of the State of Mississippi or the Constitution of the United States of America, or as a result of any legislative or administrative action (whether state or federal) or by final decree, judgment or



order of any court or administrative body (whether state or federal) after any contest thereof by the Company in good faith, the Indenture, the Agreement or the Series 2019 Bonds shall become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in the Agreement.

In addition, during any period during a Long-Term Interest Rate Period during which the Series 2019 Bonds are not subject to optional redemption by the Issuer at the direction of the Company as described under “REDEMPTION – Optional Redemption During Long-Term Interest Rate Period” above, the Series 2019 Bonds will be nonetheless subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at any time, if the Company delivers to the Trustee a written certificate (i) to the effect that by reason of a change in use of the Project or any portion thereof, the Company has been unable, after reasonable effort, to obtain an opinion of nationally recognized bond counsel to the effect that a court, in a properly presented case, should decide that (a) Section 150 of the Internal Revenue Code of 1986, as amended (the “Code”) (or successor provision of similar import), does not prevent that portion of the Loan Repayments payable under the Agreement and attributable to interest on the Series 2019 Bonds from being deductible by the Company for federal income tax purposes and (b) Treasury Regulations Section 1.142-2 (or a successor provision of similar import) does not prevent interest on the Series 2019 Bonds from being excluded for federal income tax purposes from the gross income of the owners thereof (other than in the hands of an owner of a Series 2019 Bond who is a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code), (ii) specifying that as a result of its inability to obtain such opinion of nationally recognized bond counsel, the Company has elected to prepay amounts due under the Agreement equal to the redemption price of the Series 2019 Bonds to be so redeemed and (iii) specifying the principal amount of the Series 2019 Bonds which the Company has determined to be the minimum necessary to be so redeemed in order for the Company to retain its rights to such interest deductions and for interest on the Series 2019 Bonds to retain such exclusion from gross income for federal income tax purposes (which principal amount of the Series 2019 Bonds will be so redeemed). The redemption price for the Series 2019 Bonds shall be equal to the outstanding principal amount thereof, plus accrued interest, if any, to the redemption date.

### **Extraordinary Mandatory Redemption**

The Series 2019 Bonds are subject to mandatory redemption by the Issuer, at the principal amount thereof plus accrued interest to the redemption date, on the 180th day (or such earlier date as may be designated by the Company) after a final determination by a court of competent jurisdiction or an administrative agency, or receipt by the Issuer and the Company of an opinion of a nationally recognized bond counsel obtained by the Company and rendered at the request of the Company, to the effect that (a) as a result of a failure by the Company to perform or observe any covenant or agreement in the Agreement, or the inaccuracy of any representation, the interest on the Series 2019 Bonds is included for federal income tax purposes in the gross income of the Bondholders thereof, or would be so included absent such redemption, or (b) such redemption is required under the terms of a closing agreement or other similar agreement with the Internal Revenue Service settling an issue raised in connection with an examination of the Series 2019 Bonds or in connection with a submission to the Internal Revenue Service Voluntary



Closing Agreement Program or similar program. No determination by any court or administrative agency will be considered final for such purpose unless the Company has had an opportunity to participate in the proceeding which resulted in such determination, either directly or through an owner of a Series 2019 Bond, to a degree it deems sufficient and until the conclusion of any court proceeding initiated after a final agency determination, and of any appellate review sought by any party to such agency or court proceeding or the expiration of the time for seeking such review. The Series 2019 Bonds will be redeemed either in whole or in part in such principal amount that the interest payable on the Series 2019 Bonds remaining outstanding after such redemption would not be included in the gross income of any owner thereof, other than an owner of a Series 2019 Bond who is a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code.

### **Selection of Series 2019 Bonds to be Redeemed**

In the case of the redemption of less than all of the outstanding Series 2019 Bonds, the Series 2019 Bonds to be redeemed shall be selected by the Trustee, by lot or in such other manner as the Trustee in its discretion may determine to be fair and appropriate, in the principal amounts designated by the Company or otherwise as required by the Indenture; provided, however, that in connection with any redemption of Series 2019 Bonds, the Trustee shall first select for redemption any Series 2019 Bond held by the Tender Agent for the account of the Company, and that if the Company shall have offered to purchase all Series 2019 Bonds then outstanding and less than all of such Series 2019 Bonds have been tendered to the Company for such purchase, the Trustee, at the direction of the Company, shall select for redemption all such Series 2019 Bonds which have not been so tendered; and provided further that the portion of any Series 2019 Bond to be redeemed shall be in a principal amount constituting an authorized denomination of such Series 2019 Bond and that, in selecting Series 2019 Bonds for redemption, the Trustee shall treat each Series 2019 Bond as representing that number of Series 2019 Bonds which is obtained by dividing the principal amount of such Series 2019 Bond by the minimum authorized denomination of such Series 2019 Bond. See “THE SERIES 2019 BONDS – Book-Entry System.”

### **Notice and Effect of Redemption**

A notice of redemption will be mailed, at least 30 days before the redemption date of any Series 2019 Bonds, to all owners of Series 2019 Bonds to be redeemed in whole or in part, but failure to mail any such notice to the owner of a Series 2019 Bond shall not affect the validity of the proceedings for the redemption of any other Series 2019 Bonds.

Any notice of redemption, except a notice of extraordinary mandatory redemption, shall, unless at the time such notice is given the Series 2019 Bonds to be redeemed are deemed to have been paid in accordance with the terms of the Indenture (see “THE INDENTURE – Defeasance”), state any conditions to the redemption. Such notice shall be of no effect unless the conditions, if any, set forth in the notice have been satisfied. In the event that such notice contains conditions and the conditions have not been satisfied on or prior to the redemption date, the redemption shall not be made, and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such conditions have not been satisfied.



If a notice of redemption shall be unconditional, or if the conditions of a conditional notice of redemption shall have been satisfied, the Series 2019 Bonds so called for redemption shall become and be due and payable on the date fixed for redemption, and upon the presentation and surrender of such Series 2019 Bonds at the place or places specified such Series 2019 Bonds shall be redeemed.

Any Series 2019 Bonds selected for redemption which are deemed to have been paid under the terms of the Indenture will cease to bear interest on the date fixed for redemption.

## **SPECIAL CONSIDERATIONS RELATING TO THE SERIES 2019 BONDS**

### The Remarketing Agent is Paid by the Company

The Remarketing Agent's responsibilities include determining the interest rate from time to time and remarketing the Series 2019 Bonds that are optionally or mandatorily tendered by the owners thereof (subject, in each case, to the terms of the Indenture and the Remarketing Agreement), all as further described in this Official Statement. The Remarketing Agent is appointed by the Company and is paid by the Company for its services. As a result, the interests of the Remarketing Agent may differ from those of existing holders and potential purchasers of the Series 2019 Bonds.

### The Remarketing Agent Routinely Purchases Bonds for its Own Account

The Remarketing Agent acts as remarketing agent for a variety of variable rate demand obligations and, in its sole discretion, routinely purchases such obligations for its own account. The Remarketing Agent is permitted, but not obligated, to purchase tendered Series 2019 Bonds for its own account and, in its sole discretion, may routinely acquire such tendered Series 2019 Bonds in order to achieve a successful remarketing of the Series 2019 Bonds (i.e., because there otherwise are not enough buyers to purchase the Series 2019 Bonds) or for other reasons. However, the Remarketing Agent is not obligated to purchase Bonds, and may cease doing so at any time without notice. The Remarketing Agent also may make a market in the Series 2019 Bonds by routinely purchasing and selling Series 2019 Bonds other than in connection with an optional or mandatory tender and remarketing. Such purchases and sales may be at or below par. However, the Remarketing Agent is not required to make a market in the Series 2019 Bonds. The Remarketing Agent also may sell any Series 2019 Bonds it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others in order to reduce its exposure to the Series 2019 Bonds. The purchase of Series 2019 Bonds by the Remarketing Agent may create the appearance that there is greater third party demand for the Series 2019 Bonds in the market than is actually the case. The practices described above also may result in fewer Series 2019 Bonds being tendered in a remarketing.

### Series 2019 Bonds May be Offered at Different Prices on Any Date Including an Interest Rate Determination Date

Pursuant to the Indenture and the Remarketing Agreement, the Remarketing Agent is required to determine the applicable rate of interest that, in its judgment, is the lowest rate that would permit the sale of the Series 2019 Bonds bearing interest at the applicable interest rate at



par plus accrued interest, if any, on and as of the applicable interest rate determination date. The interest rate will reflect, among other factors, the level of market demand for the Series 2019 Bonds (including whether the Remarketing Agent is willing to purchase Series 2019 Bonds for its own account). There may or may not be Series 2019 Bonds tendered and remarketed on an interest rate determination date, the Remarketing Agent may or may not be able to remarket any Series 2019 Bonds tendered for purchase on such date at par and the Remarketing Agent may sell Series 2019 Bonds at varying prices to different investors on such date or any other date. The Remarketing Agent is not obligated to advise purchasers in a remarketing if it does not have third party buyers for all of the Series 2019 Bonds at the remarketing price. In the event the Remarketing Agent owns any Series 2019 Bonds for its own account, it may, in its sole discretion in a secondary market transaction outside the tender process, offer such Series 2019 Bonds on any date, including the interest rate determination date, at a discount to par to some investors.

#### The Ability to Sell the Series 2019 Bonds Other Than Through the Tender Process May Be Limited

The Remarketing Agent may buy and sell Series 2019 Bonds other than through the tender process. However, it is not obligated to do so and may cease doing so at any time without notice and may require holders that wish to tender their Series 2019 Bonds to do so through the Tender Agent with appropriate notice. Thus, investors who purchase the Series 2019 Bonds, whether in a remarketing or otherwise, should not assume that they will be able to sell their Series 2019 Bonds other than by tendering the Series 2019 Bonds in accordance with the tender process.

#### Under Certain Circumstances, the Remarketing Agent May Be Removed, Resign or Cease Remarketing the Series 2019 Bonds, Without a Successor Being Named

Under certain circumstances, the Remarketing Agent may be removed or have the ability to resign or cease its remarketing efforts, without a successor having been named, subject to the terms of the Indenture and the Remarketing Agreement.

### **THE AGREEMENT**

#### **Loan Repayments**

The Company has agreed to pay to the Trustee for the account of the Issuer an amount equal to the principal amount of the Series 2019 Bonds and an amount equal to the aggregate of the premium, if any, and interest on the Series 2019 Bonds (the "Loan Repayments") at such times and in such amounts and in the manner provided in the Indenture for the Issuer to cause payments to be made to the Owners of the Series 2019 Bonds of the principal of and premium, if any, and interest on the Series 2019 Bonds.

#### **Agreement to Acquire and Construct the Project**

The Company is obligated in the Agreement to use commercially reasonable efforts to cause the acquisition, construction and installation of the Project to be performed with reasonable dispatch in accordance with the plans and specifications therefor, delays by reason of "force

majeure” beyond the reasonable control of the Company excepted, but if for any reason such acquisition, construction and installation is not completed there shall be no diminution in the Loan Repayments and other amounts required to be paid by the Company under the Agreement.

### **The Company Obligations Unconditional**

Until such time as the principal of and premium, if any, and interest on the Series 2019 Bonds shall have been fully paid or deemed paid in accordance with the Indenture, the Company’s obligations under the Agreement are absolute and unconditional and the Company has agreed that it (a) will not suspend or discontinue payment of any amounts required to be paid by it under the Agreement, (b) will perform and observe all of its other agreements contained in the Agreement, and (c) except as permitted by the Agreement, will not terminate the Agreement for any cause.

### **Payments for Series 2019 Bonds Delivered for Purchase**

The Company will agree to deposit, on or prior to the purchase date of the Series 2019 Bonds to be purchased from the Owners thereof as described under the heading “THE SERIES 2019 BONDS – Purchase of Series 2019 Bonds,” an amount of money which, together with other moneys available for such purpose, will be sufficient to effect the purchase of such Series 2019 Bonds.

### **Merger, Sale or Consolidation**

The Company has agreed that, so long as any Series 2019 Bonds are outstanding, it will maintain its legal existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into one or more other entities or permit one or more other entities to consolidate with or merge into it; provided, that the Company may consolidate with or merge into one or more other entities, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to one or more other entities all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity or entities, as the case may be (if other than the Company), assumes or assume in writing all of the obligations of the Company in the Agreement, and, if not organized under the laws of the State of Mississippi, is qualified to do business in the State of Mississippi.

### **Events of Default**

The occurrence of any one or more of the following is an event of default under the Agreement: (a) failure by the Company to pay or cause to be paid when due the Loan Repayments in the amounts and at the times specified in the Agreement or the amounts necessary to enable the Tender Agent to pay the Purchase Price of Series 2019 Bonds delivered to it for purchase, which failure shall have resulted in an event of default described in clause (a), (b) or (c) under “THE INDENTURE – Events of Default;” (b) failure by the Company to observe or to perform any other covenant, condition, representation or agreement in the Agreement on its part to be observed or performed for a period of 90 days after written notice thereof to the Company by the Issuer or the Trustee, which may, and upon the written request of the Owners of not less than a majority in aggregate principal amount of the Series 2019 Bonds



then outstanding shall, give such notice, unless such period is extended by the Issuer and the Trustee or the Issuer, the Trustee and the Owners of Series 2019 Bonds, as provided in the Agreement (provided, however, that the Issuer and the Trustee or the Issuer, the Trustee and the Owners of the Series 2019 Bonds, as provided in the Agreement, as the case may be, will be deemed to have agreed to an extension of such period if corrective action is initiated by the Company within such period and is being diligently pursued), or unless such obligations are suspended by reason of force majeure, as defined in the Agreement; (c) 90 days after certain events of bankruptcy, liquidation or reorganization or (d) certain events of bankruptcy, dissolution, liquidation or reorganization by the Company.

## **Remedies**

### Acceleration and Limitations Thereon

Upon the occurrence and continuance of an event of default described in clause (a), (c) or (d) in “Events of Default,” and further upon the condition that all Series 2019 Bonds outstanding under the Indenture shall have become immediately due and payable, the Loan Repayments shall, without further action, become immediately due and payable.

Any waiver of an event of default under the Indenture and a rescission and annulment of its consequences shall constitute a waiver of the corresponding event of default under the Agreement and a rescission and annulment of the consequences thereof.

### Other Remedies

Upon the occurrence and continuance of any event of default, the Trustee as the Issuer’s assignee may take whatever action at law or in equity may appear necessary or desirable to collect the Loan Repayments then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under the Agreement.

## **Amendment**

As provided in the Indenture, the Issuer and the Company may enter into, and the Trustee may consent to, without the consent of the Owners of the Series 2019 Bonds, such agreements supplemental to the Agreement as shall not be inconsistent with the terms and provisions of the Agreement, and shall not be, in the opinion of Bond Counsel, detrimental to the interests of the Owners of the Series 2019 Bonds: (a) to cure any ambiguity or defect or omission in the Agreement or in any supplemental agreement, (b) to grant to or confer upon the Issuer or the Trustee for the benefit of the Owners of the Series 2019 Bonds any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Issuer or the Owners of the Series 2019 Bonds or the Trustee, (c) to correct any description of, or to reflect changes in, any properties comprising the Project or (d) in connection with any other changes which, in the judgment of the Trustee, will not restrict, limit or reduce the obligation of the Company to make the Loan Repayments or otherwise materially impair the security of the Owners of the Series 2019 Bonds under the Indenture. Any other amendment of the Agreement requires the consent of the Owners of a majority in aggregate principal amount of all Series 2019 Bonds then outstanding.

## **THE INDENTURE**

### **Assignment of Issuer's Interest**

Under the Indenture, the Issuer has pledged and assigned to the Trustee the Issuer's rights under the Agreement, including the Loan Repayments, except for certain rights to indemnification and reimbursement of expenses.

### **Creation of Construction Fund**

The Indenture creates a Construction Fund. The Trustee will deposit the proceeds of the sale of the Series 2019 Bonds into the Construction Fund, less the Underwriter's discount. The moneys in the Construction Fund shall be held by the Trustee in trust and, subject to the terms of the Indenture, will be applied to the payment of the Cost of the Project (as described in the Indenture) and, pending such application, shall be subject to the lien of the Indenture.

### **Creation of Bond Fund**

The Indenture creates a Bond Fund. Moneys deposited in the Bond Fund are to be held in trust by the Trustee and, pending application in accordance with the Indenture, are subject to a lien and charge in favor of the Owners of the Series 2019 Bonds outstanding under the Indenture and to the prior lien of the Trustee for payment of its fees and expenses.

There shall be deposited to the credit of the Bond Fund (a) the accrued interest, if any, received on the sale of the Series 2019 Bonds, (b) all Loan Repayments, and (c) all other moneys received by the Trustee under and pursuant to any of the provisions of the Agreement or otherwise which are required or are accompanied by directions from the Company or the Issuer that such moneys are to be paid into the Bond Fund. In the event of an acceleration of the Series 2019 Bonds in accordance with terms of the Indenture, the Trustee without further direction shall immediately transfer all of the moneys in the Construction Fund to the Bond Fund.

Moneys in the Bond Fund shall be used for the payment of the principal of and premium, if any, and interest on the Series 2019 Bonds or for the redemption or purchase of Series 2019 Bonds in accordance with the terms of the Indenture.

### **Creation of a Purchase Fund**

The Indenture creates a Purchase Fund. Moneys deposited in the Purchase Fund are to be held by the Tender Agent for the purchase of Series 2019 Bonds pursuant to the Indenture and are not pledged to pay principal of or interest or any premium on the Series 2019 Bonds.

### **Investment of Funds**

The Trustee shall, at the request of the Company, invest moneys held in the Construction Fund and Bond Fund in the investments or securities specified in the Indenture. Gains or losses resulting from the investment of moneys in the Construction Fund or Bond Fund will be credited or charged to such Fund.



## Defeasance

If there is paid to the Owners of all of the Series 2019 Bonds the principal of and premium, if any, and interest on the Series 2019 Bonds due and thereafter to become due, together with all other sums payable under the Indenture, then the rights, title and interest of the Trustee in the estate pledged and assigned to it under the Indenture shall cease, and the Series 2019 Bonds shall cease to be entitled to the lien of the Indenture. The Trustee shall thereupon turn over to the Company any surplus in the Bond Fund and any other fund created under the Indenture. If the principal of and premium, if any, and interest due and thereafter to become due is paid on less than all the Series 2019 Bonds then outstanding, such Series 2019 Bonds shall cease to be entitled to the lien, benefit or security under the Indenture.

Any or all Series 2019 Bonds then bearing interest at a Long-Term Interest Rate during a Long-Term Interest Rate Period ending on or after the redemption date or on the day immediately preceding the maturity date, as the case may be, or at Commercial Paper Term Rates for Commercial Paper Terms which end on the redemption date or the day immediately preceding the maturity date, as the case may be, shall be deemed to have been paid when (a) in the case of Series 2019 Bonds to be redeemed, the Company shall have given to the Trustee irrevocable instructions to mail the notice of redemption therefor, (b) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or obligations issued or unconditionally guaranteed by the United States of America, or certain securities which represent interests in such obligations, the principal of and interest on which, when due, will provide moneys which, together with any moneys also deposited with or held by the Trustee, shall be sufficient to pay when due the principal of and premium, if any, and interest due or to become due on such Series 2019 Bonds, and (c) in the event such Series 2019 Bonds do not mature and are not to be redeemed within the next succeeding 60 days, the Company (i) shall have given the Trustee irrevocable instructions to mail, as soon as permitted by the Indenture, a notice to the Owners of such Series 2019 Bonds stating that the above deposit has been made with the Trustee and that such Series 2019 Bonds are deemed to have been paid and stating the maturity or redemption date upon which moneys are to be available to pay the principal of and premium, if any, and interest on such Series 2019 Bonds and (ii) shall cause to be delivered to the Trustee or escrow agent, as the case may be, a verification report of any independent, nationally recognized, certified public accountant showing the sufficiency of such deposit. The provisions of the Indenture relating to the rights of the Owners of the Series 2019 Bonds to payment, registration of transfer and exchange shall remain in full force and effect with respect to all Series 2019 Bonds until the maturity date of the Series 2019 Bonds or the last date fixed for redemption of all Series 2019 Bonds prior to maturity notwithstanding that the Series 2019 Bonds are deemed to be paid as described above. If less than all Series 2019 Bonds are to be defeased, the Trustee shall select such Series 2019 Bonds in the manner described under "THE SERIES 2019 BONDS – Selection of Series 2019 Bonds to be Redeemed."



## Events of Default

The occurrence of any one or more of the following shall be an event of default under the Indenture: (a) failure to pay the principal of or premium, if any, on the Series 2019 Bonds when the same shall become due and payable, whether at maturity, through unconditional proceedings for redemption or otherwise; (b) failure to pay interest on any of the Series 2019 Bonds when the same shall become due and payable and the continuation of such failure for one Business Day; (c) a failure to pay amounts due to Owners of the Series 2019 Bonds for purchase thereof after such payment has become due and payable and the continuation of such failure for one Business Day; (d) failure to perform any other covenant, condition, agreement or provision contained in the Series 2019 Bonds or in the Indenture on the part of the Issuer to be performed for a period of 90 days after written notice thereof to the Issuer which may, and upon the written request of the Owners of not less than a majority in aggregate principal amount of the Series 2019 Bonds then outstanding shall, be given by the Trustee, unless such period is extended by the Trustee, or the Trustee and the Owners of the Series 2019 Bonds, as the case may be; provided, however, that the Trustee, or the Trustee and the Owners of the Series 2019 Bonds, as the case may be, will be deemed to have agreed to an extension of such period if corrective action is instituted by the Issuer or the Company within such period and is being diligently pursued; or (e) an event of default as defined in the Agreement.

## Remedies

### Acceleration and Limitations Thereon

Upon the occurrence and continuance of an event of default described in clause (a), (b), or (c) above in “Events of Default,” or an event of default described in clauses (c) or (d) above under “THE AGREEMENT – Events of Default,” the Trustee may, and upon the written request of the Owners of not less than a majority in aggregate principal amount of the Series 2019 Bonds then outstanding shall, by notice in writing to the Issuer and the Company, declare the principal of the Series 2019 Bonds then outstanding (if not then due and payable) to be immediately due and payable.

The provisions described in the preceding paragraph, however, are subject to the condition that, if, after the principal of the Series 2019 Bonds has been declared to be due and payable, and before any judgment or decree for the payment of the moneys due has been obtained or entered, the Company, pursuant to the Agreement, shall deposit with the Trustee an amount sufficient to pay all matured installments of interest upon the Series 2019 Bonds and the principal of the Series 2019 Bonds which have become due otherwise than by reason of such declaration (with interest upon such principal and, to the extent permissible by law, on overdue installments of interest, at the rate per annum borne by the Series 2019 Bonds on the date of such declaration) and such amounts as are sufficient to cover reasonable compensation and reimbursement of expenses payable to the Trustee, and all events of default under the Indenture other than nonpayment of the principal of Series 2019 Bonds which shall have become due by such declaration have been remedied, then, such event of default will be deemed waived and such declaration and its consequences rescinded and annulled. The Trustee will promptly give written notice of such waiver, rescission and annulment to the Issuer, the Company, the Tender Agent, the Remarketing Agent, and, if notice of the acceleration of the Series 2019 Bonds has



been given to the Owners, notice shall be given to the Owners. No such waiver, rescission and annulment shall extend to or affect any subsequent event of default or impair any right or remedy consequent thereon.

Notwithstanding anything contained in the Indenture to the contrary, the Trustee, upon the written request of the holders of not less than a majority in aggregate principal amount of the Series 2019 Bonds then outstanding, shall waive any event of default under the Indenture and its consequences; provided, however, that, except under certain circumstances described in the Indenture, an event of default under clauses (a), (b) or (c) above in "Events of Default" with respect to any Bonds may not be waived without the written consent of the holders of all such Bonds.

#### Other Remedies

Upon the occurrence and continuance of any event of default, the Trustee may, and upon the written request of the Owners of not less than a majority in aggregate principal amount of the Series 2019 Bonds then outstanding shall, upon receipt of indemnity to its satisfaction, proceed to protect and enforce its rights and the rights of the Owners of the Series 2019 Bonds under the laws of the State of Mississippi, the Indenture and the Agreement by the exercise of any proper legal or equitable remedy as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights.

#### **Owners' Right to Direct Proceedings**

The Owners of a majority in principal amount of the Series 2019 Bonds then outstanding shall have the right, upon receipt by the Trustee of indemnity to its satisfaction, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee. No Owner of any of the Series 2019 Bonds shall have any right to institute any suit, action or proceeding in equity or at law on any Series 2019 Bond or for the execution of any trust under the Indenture or for any other remedy thereunder except as provided in the Indenture, but nothing in the Indenture shall affect or impair the right of any Owner of a Series 2019 Bond to enforce the payment of the principal of and premium, if any, and interest on such Series 2019 Bond to the Owner thereof at the time and place stated in such Series 2019 Bond.

#### **Amendment**

The Issuer and the Trustee may, with the consent of the Company but without the consent of the Owners of the Series 2019 Bonds, enter into such supplemental indentures as shall not be inconsistent with the terms and provisions of the Indenture and shall not be, in the opinion of Bond Counsel, detrimental to the interests of the Owners of the Series 2019 Bonds (except to the extent permitted under (k) below): (a) to cure any ambiguity or defect or omission in the Indenture or in any supplemental indenture, (b) to grant to or confer upon the Trustee for the benefit of the Owners of the Series 2019 Bonds any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners of the Series 2019 Bonds or the Trustee, (c) to confirm the lien of the Indenture or to subject to the Indenture additional revenues, properties or collateral, (d) to correct any description of, or to reflect changes in, any properties comprising the Project, (e) to authorize a different denomination or



denominations of the Series 2019 Bonds and to make correlative amendments to the Indenture, (f) to increase or decrease the number of days prior to an adjustment of the interest rate that notice need be given by the Company to the Trustee and by the Trustee to the Owners of the Series 2019 Bonds, provided that no decrease in any such number of days shall become effective except during a Daily or a Weekly Interest Rate Period and until 30 days after the Trustee shall have given notice thereof to the Owners of the Series 2019 Bonds affected thereby; (g) in connection with any other change which, in the judgment of the Trustee, will not restrict, limit or reduce the obligation of the Issuer to pay the principal of, and interest on the Series 2019 Bonds or otherwise impair the security of the Owners of the Series 2019 Bonds under the Indenture, (h) to modify, amend or supplement the Indenture or any supplemental indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute or to permit the qualification of the Series 2019 Bonds for sale under the securities laws of any of the states of the United States of America, (i) to make amendments to the provisions of the Indenture relating to matters under Section 148(f) of the Code, provided that an opinion of Bond Counsel as to the validity of the Series 2019 Bonds and as to the exclusion of interest on the Series 2019 Bonds for federal income tax purposes in customary form; (j) to make any amendments necessary or appropriate to provide for the delivery of any additional collateral or insurance policy, irrevocable transferable letter of credit or other security device delivered to the Trustee; (k) on any date on which all Series 2019 Bonds are subject to mandatory purchase to modify the Indenture in any respect (even if to the adverse interest of Owners) provided that such supplement will not be effective until after such mandatory purchase and the payment of the purchase price in connection therewith; or (l) on any date on which all of the Series 2019 Bonds are subject to mandatory purchase, to modify the Indenture to specify redemption prices greater or lesser, and after periods longer or shorter than as set forth in the Indenture.

The Company and the Owners of not less than a majority in aggregate principal amount of the Series 2019 Bonds then outstanding shall have the right to consent to the execution by the Issuer and the Trustee of such other supplemental indentures as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular way, any of the terms or provisions contained in the Indenture or in any supplemental indenture; provided, however, that, unless approved by all of the Owners of the Series 2019 Bonds then outstanding and the Company, nothing contained in the Indenture shall permit, or be construed as permitting, (a) an extension of the maturity of the principal of or the interest on the Series 2019 Bonds, or (b) a reduction in the principal amount of the Series 2019 Bonds or the redemption premium or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of the Trust Estate, including the Loan Repayments, other than the lien and pledge created by the Indenture, or (d) a preference or priority of any Series 2019 Bond over any other Series 2019 Bond, or (e) a reduction in the aggregate principal amount of the Series 2019 Bonds required for consent to such supplemental indenture.

Any supplemental indenture that affects any right, power, obligation or authority of the Company under the Agreement or requires a revision of the Agreement shall not become effective without the consent of the Company.



## **TAX MATTERS**

Under existing law, the tax status of the Series 2019 Bonds will include the following characteristics:

### **Federal Tax-Exempt Status**

Interest on the Series 2019 Bonds will be excluded from gross income for federal income tax purposes if the Issuer and the Company comply with all requirements of the Internal Revenue Code that must be satisfied subsequent to the issuance of the Series 2019 Bonds in order that interest thereon be and remain excluded from gross income, except with respect to any Series 2019 Bonds owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Internal Revenue Code. Failure to comply with requirements of the Internal Revenue Code could cause the interest on the Series 2019 Bonds to be included in gross income, retroactive to the date of issuance of the Series 2019 Bonds. The Issuer and the Company have covenanted to comply with all such requirements.

### **Federal Tax Preference Treatment**

Interest on the Series 2019 Bonds will be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals.

### **Opinion of Bond Counsel**

Maynard, Cooper & Gale, P.C., Birmingham, Alabama, has served as bond counsel to the Company with respect to the issuance of the Series 2019 Bonds. The opinion of bond counsel with respect to the Series 2019 Bonds will address the tax status summarized above and is attached to this Official Statement as APPENDIX C. The opinion should be read in its entirety for a complete understanding of the scope of the opinion and the conclusions expressed.

### **Collateral Tax Consequences**

Prospective purchasers of the Series 2019 Bonds should be aware that ownership of the Series 2019 Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with “excess net passive income”, foreign corporations subject to a branch profits tax, life insurance companies, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Series 2019 Bonds. Bond Counsel will not express any opinion as to such collateral tax consequences. Prospective purchasers of the Series 2019 Bonds should consult their tax advisors as to collateral federal income tax consequences.

From time to time, there are legislative proposals in Congress that, if enacted, could cause interest on the Series 2019 Bonds to be subject, directly or indirectly, to federal income taxation, adversely affect the market value of the Series 2019 Bonds or otherwise prevent owners of the Series 2019 Bonds from realizing the full current benefit of the tax-exempt status of such interest. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted, such legislation would apply to the Series 2019 Bonds issued prior to enactment. Purchasers of the Series 2019 Bonds should consult their tax advisors regarding the effect of any such legislation. The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the Series 2019 Bonds, and Bond Counsel has expressed no opinion with respect to any proposed legislation or as to the tax treatment of interest on the Series 2019 Bonds, or as to the consequences of owning or receiving interest on the Series 2019 Bonds, as of any future date. Bond Counsel has not agreed to notify the Issuer, the Company or the owners of the Series 2019 Bonds as to any event subsequent to the issuance of the Series 2019 Bonds that might affect the tax treatment of interest on the Series 2019 Bonds, the market value of the Series 2019 Bonds or the consequences of owning or receiving interest on the Series 2019 Bonds.

### **Mississippi Tax Status**

In the opinion of Bond Counsel, under existing law, interest on the Series 2019 Bonds is exempt from income taxation in the State of Mississippi. Interest on the Series 2019 Bonds may or may not be subject to state or local income taxation in jurisdictions other than Mississippi under applicable state or local laws. Purchasers of the Series 2019 Bonds should consult their tax advisors as to the tax status of the Series 2019 Bonds in a particular state or local jurisdiction other than Mississippi.

### **CONTINUING DISCLOSURE**

Solely for the purpose of enabling the Underwriter to comply with the requirements of Rule 15c2-12(b)(5) (the “Rule”), the Company has undertaken (but only to the extent required for compliance with valid and effective provisions of the Rule) pursuant to a 15c2-12 Undertaking attached hereto as Appendix E, for the benefit of the Bondholders, to provide to the Municipal Securities Rulemaking Board under its Electronic Municipal Market Access System (“EMMA”) either a copy, or notice of the filing of the following with the Commission of: (i) not later than 120 days after the end of each fiscal year of the Company, the audited annual financial statements of the Company of the type included in Appendix A-1 to this Official Statement, or, if the Company has filed an annual report with the Commission on Form 10-K (or any successor form), the Form 10-K; and (ii) in a timely manner, notice of the occurrence of certain events enumerated in the Rule (the “Company’s Undertaking”).

Neither the Issuer nor its members, officers or employees have any responsibility or liability for the sufficiency, performance or enforcement of the Company’s Undertaking. The Company and its directors, officers, employees and shareholders shall have no liability under the Company’s Undertaking for any act or failure to act; a failure to perform the Company’s Undertaking shall not constitute an Event of Default under the Agreement, an event of default under the Indenture or a default under the Note or any Bond; and the sole remedy shall be



specific enforcement of the Company's Undertaking by the Trustee or by such persons, if any, as the Rule may require to be entitled to enforce the same. The Company reserves the right to (a) contest the validity of the Rule and (b) modify its performance of the Company's Undertaking, to the extent not inconsistent with valid and effective provisions of the Rule.

## **UNDERWRITING**

Fifth Third Securities, Inc. (the "Underwriter") will agree to purchase the Series 2019 Bonds pursuant to an Underwriting Agreement at a price equal to the principal amount thereof minus the Underwriter's discount of \$34,375 and certain out-of-pocket expenses. The Company will agree to indemnify the Underwriter against certain liabilities, including certain liabilities under the federal securities laws.

With respect to the Series 2019 Bonds, the Underwriter's obligation to purchase the Series 2019 Bonds is subject to certain conditions precedent. The Underwriter does not have the right to purchase less than all of the Series 2019 Bonds if any Series 2019 Bonds are purchased. The offering price of the Series 2019 Bonds may be changed from that set forth on the cover page hereof from time to time by the Underwriter. The Underwriter may offer and sell the Series 2019 Bonds to certain dealers (including dealers depositing Series 2019 Bonds into investment trusts, accounts or funds) and others at prices lower than the public offering prices set forth on the cover page hereof.

## **LEGALITY**

Legal matters incident to the issuance of the Series 2019 Bonds are subject to the legal opinion of Maynard, Cooper & Gale, P.C., as Bond Counsel. The signed legal opinion for the Series 2019 Bonds, dated and premised on law in effect as of the date of original delivery of the Series 2019 Bonds, will be delivered to the Underwriter at the time of original delivery of the Series 2019 Bonds. The proposed form of such legal opinion is set forth in Appendix C hereto.

Morgan, Lewis & Bockius LLP, Liebler, Gonzalez, & Portuondo, as Counsel for the Company, and, with respect to matters of Mississippi law, Maynard, Cooper & Gale P.C. will also render opinions relating to certain matters pertaining to the Company and its obligations under the Agreement. Balch & Bingham LLP will pass upon certain legal matters for the Issuer. Certain legal matters will be passed upon for the Underwriter by Ballard Spahr LLP, Philadelphia, Pennsylvania, counsel to the Underwriter.

## **VALIDATION AND LITIGATION**

In accordance with Section 31-13-1 et seq., Mississippi Code of 1972, as amended, (the "Revenue Bond Law"), the Issuer instituted proceedings in the Chancery Court of the First Judicial District of Hinds County, Mississippi to validate the Series 2019 Bonds and the Agreement and the payments made thereunder as security for the payment of the Series 2019 Bonds. A final, nonappealable validation order was received from the Chancery Court of the First Judicial District of Hinds County, Mississippi on December 3, 2019.

There is no controversy or litigation of any nature now pending against the Issuer for which service has been perfected restraining or enjoining the issuance or delivery of the Series

2019 Bonds or questioning or affecting the validity of the Series 2019 Bonds or the proceedings and authority under which they are being issued nor, to the knowledge of the Issuer, is any such litigation threatened. There is no litigation pending for which service has been perfected which in any manner questions the power of the Issuer to issue the Series 2019 Bonds and to secure the Series 2019 Bonds in accordance with the provisions of the Indenture, nor is there now pending any litigation which in any manner questions the powers of the Issuer nor, to the knowledge of the Issuer, is any such litigation threatened.



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

## **APPENDIX A**

### **GULF POWER COMPANY**

Gulf Power Company (the “Company”) is a rate-regulated electric utility under the jurisdiction of the Florida Public Service Commission engaged in the generation, transmission, distribution and sale of electric energy in northwest Florida. As of January 1, 2019, the Company served more than 460,000 customers in eight counties throughout northwest Florida and had approximately 2,300 MW of fossil-fueled electric generating capacity and 9,400 miles of transmission and distribution lines located in Florida, Mississippi and Georgia.

On January 1, 2019, NextEra Energy, Inc. (“NextEra”) acquired all of the outstanding common shares of the Company from The Southern Company, which resulted in the Company becoming a wholly-owned subsidiary of NextEra. The Company was incorporated under the laws of Maine in 1925, and became a Florida corporation after being domesticated under the laws of Florida in 2005. The principal executive offices of the Company are located at 500 Bayfront Parkway, Pensacola, Florida 32501, and the telephone number is (850) 444-6111.

The Company is not currently subject to the informational requirements of the Securities Exchange Act of 1934, as amended. Nevertheless, the Company has undertaken to provide certain information to Electronic Municipal Market Access System as described in the 15c2-12 Undertaking described in the Official Statement.



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

**APPENDIX A-1**  
**COMPANY FINANCIAL STATEMENTS**



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK



## **INDEPENDENT AUDITORS' REPORT**

Gulf Power Company

We have audited the accompanying financial statements of Gulf Power Company (the Company), which comprise the balance sheets and statements of capitalization as of December 31, 2018 and 2017, and the related statements of income, comprehensive income, common stockholder's equity, and cash flows for the years then ended, and the related notes to the financial statements (collectively referred to as the "financial statements"), in conformity with accounting principles generally accepted in the United States of America.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Gulf Power Company as of December 31, 2018 and 2017, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

*Deloitte + Touche LLP*

Atlanta, Georgia  
April 1, 2019



**STATEMENTS OF INCOME**  
**For the Years Ended December 31, 2018 and 2017**  
**Gulf Power Company Financial Statements and Notes**

	2018	2017
	<i>(in millions)</i>	
<b>Operating Revenues:</b>		
Retail revenues	\$ 1,213	\$ 1,281
Wholesale revenues, non-affiliates	54	57
Wholesale revenues, affiliates	132	108
Other revenues	66	70
Total operating revenues	1,465	1,516
<b>Operating Expenses:</b>		
Fuel	421	427
Purchased power	177	155
Other operations and maintenance	356	369
Depreciation and amortization	191	137
Taxes other than income taxes	118	116
Loss on Plant Scherer Unit 3	—	33
Total operating expenses	1,263	1,237
<b>Operating Income</b>	<b>202</b>	<b>279</b>
<b>Other Income and (Expense):</b>		
Interest expense, net of amounts capitalized	(53)	(50)
Other income (expense), net	(9)	—
Total other income and (expense)	(62)	(50)
<b>Earnings Before Income Taxes</b>	<b>140</b>	<b>229</b>
Income taxes (benefit)	(20)	90
<b>Net Income</b>	<b>160</b>	<b>139</b>
<b>Dividends on Preference Stock</b>	<b>—</b>	<b>4</b>
<b>Net Income After Dividends on Preference Stock</b>	<b>\$ 160</b>	<b>\$ 135</b>

The accompanying notes are an integral part of these financial statements.

**STATEMENTS OF COMPREHENSIVE INCOME**  
**For the Years Ended December 31, 2018 and 2017**  
**Gulf Power Company Financial Statements and Notes**

	2018	2017
	<i>(in millions)</i>	
<b>Net Income</b>	<b>\$ 160</b>	<b>\$ 139</b>
Other comprehensive income (loss):		
Qualifying hedges:		
Changes in fair value, net of tax of \$- and \$(1), respectively	—	(1)
<b>Total other comprehensive income (loss)</b>	<b>—</b>	<b>(1)</b>
<b>Comprehensive Income</b>	<b>\$ 160</b>	<b>\$ 138</b>

The accompanying notes are an integral part of these financial statements.



# STATEMENTS OF CASH FLOWS

For the Years Ended December 31, 2018 and 2017

Gulf Power Company Financial Statements and Notes

	2018	2017
	<i>(in millions)</i>	
<b>Operating Activities:</b>		
Net income	\$ 160	\$ 139
Adjustments to reconcile net income to net cash provided from operating activities —		
Depreciation and amortization, total	197	149
Deferred income taxes	3	72
Loss on Plant Scherer Unit 3	—	33
Other, net	(4)	(2)
Changes in certain current assets and liabilities —		
-Receivables	29	(43)
-Other current assets	—	13
-Accounts payable	(103)	20
-Over recovered regulatory clause revenues	36	(12)
-Other current liabilities	(5)	(13)
Net cash provided from operating activities	313	356
<b>Investing Activities:</b>		
Property additions	(346)	(202)
Cost of removal, net of salvage	(34)	(21)
Other investing activities	(20)	(11)
Net cash used for investing activities	(400)	(234)
<b>Financing Activities:</b>		
Increase (decrease) in notes payable, net	(45)	(223)
Proceeds —		
Common stock issued to parent	—	175
Capital contributions from parent company	267	2
Senior notes	—	300
Redemptions —		
Preference stock	—	(150)
Senior notes	—	(85)
Payment of common stock dividends	(153)	(165)
Other financing activities	(1)	(4)
Net cash provided from (used for) financing activities	68	(150)
Net Change in Cash, Cash Equivalents, and Restricted Cash	(19)	(28)
Cash, Cash Equivalents, and Restricted Cash at Beginning of Year	28	56
Cash, Cash Equivalents, and Restricted Cash at End of Year	\$ 9	\$ 28
<b>Supplemental Cash Flow Information:</b>		
Cash paid (received) during the period for —		
Interest (net of \$- and \$- capitalized, respectively)	\$ 50	\$ 46
Income taxes (net of refunds)	(29)	12
Noncash transactions —		
Accrued property additions at year-end	26	31
Other financing activities related to energy services	—	(7)
Receivables related to energy services	—	7

The accompanying notes are an integral part of these financial statements.

**BALANCE SHEETS**  
**At December 31, 2018 and 2017**  
**Gulf Power Company Financial Statements and Notes**

<b>Assets</b>	<b>2018</b>	<b>2017</b>
	<i>(in millions)</i>	
<b>Current Assets:</b>		
Cash and cash equivalents	\$ 9	\$ 28
Receivables —		
Customer accounts receivable	77	76
Unbilled revenues	57	67
Under recovered regulatory clause revenues	—	27
Affiliated	—	14
Other accounts and notes receivable	8	7
Accumulated provision for uncollectible accounts	(1)	(1)
Fossil fuel stock	62	63
Materials and supplies	66	57
Other regulatory assets, current	45	56
Property damage reserve	34	—
Other current assets	11	21
<b>Total current assets</b>	<b>368</b>	<b>415</b>
<b>Property, Plant, and Equipment:</b>		
In service	5,391	5,196
Less: Accumulated provision for depreciation	1,543	1,461
Plant in service, net of depreciation	3,848	3,735
Construction work in progress	199	91
<b>Total property, plant, and equipment</b>	<b>4,047</b>	<b>3,826</b>
<b>Deferred Charges and Other Assets:</b>		
Deferred charges related to income taxes	29	31
Other regulatory assets, deferred	703	502
Other deferred charges and assets	41	23
<b>Total deferred charges and other assets</b>	<b>773</b>	<b>556</b>
<b>Total Assets</b>	<b>\$ 5,188</b>	<b>\$ 4,797</b>

The accompanying notes are an integral part of these financial statements.



# **BALANCE SHEETS**

**At December 31, 2018 and 2017**

**Gulf Power Company Financial Statements and Notes**

<b>Liabilities and Stockholder's Equity</b>	<b>2018</b>	<b>2017</b>
	<i>(in millions)</i>	
<b>Current Liabilities:</b>		
Notes payable	\$ —	\$ 45
Accounts payable —		
Affiliated	—	52
Other	222	75
Customer deposits	34	35
Accrued taxes	17	10
Accrued interest	9	9
Accrued compensation	10	39
Deferred capacity expense, current	22	22
Asset retirement obligations, current	46	37
Other regulatory liabilities, current	50	—
Other current liabilities	17	27
<b>Total current liabilities</b>	<b>427</b>	<b>351</b>
<b>Long-Term Debt</b> (See accompanying statements)	<b>1,286</b>	<b>1,285</b>
<b>Deferred Credits and Other Liabilities:</b>		
Accumulated deferred income taxes	622	537
Deferred credits related to income taxes	374	458
Employee benefit obligations	87	102
Deferred capacity expense	75	97
Asset retirement obligations	123	105
Other cost of removal obligations	211	221
Other regulatory liabilities, deferred	4	43
Other deferred credits and liabilities	59	67
<b>Total deferred credits and other liabilities</b>	<b>1,555</b>	<b>1,630</b>
<b>Total Liabilities</b>	<b>3,268</b>	<b>3,266</b>
<b>Common Stockholder's Equity</b> (See accompanying statements)	<b>1,920</b>	<b>1,531</b>
<b>Total Liabilities and Stockholder's Equity</b>	<b>\$ 5,188</b>	<b>\$ 4,797</b>
<b>Commitments and Contingent Matters</b> (See notes)		

The accompanying notes are an integral part of these financial statements.

# STATEMENTS OF CAPITALIZATION

At December 31, 2018 and 2017

Gulf Power Company Financial Statements and Notes

	2018	2017	2018	2017
	(in millions)		(percent of total)	
<b>Long-Term Debt:</b>				
Long-term notes payable —				
4.75% due 2020	\$ 175	\$ 175		
3.10% due 2022	100	100		
3.30% to 5.10% due 2027-2044	715	715		
Total long-term notes payable	990	990		
Other long-term debt —				
Pollution control revenue bonds —				
2.10% due 2022	37	37		
2.60% due 2023	33	33		
1.40% to 4.45% due 2037-2049	157	157		
Variable rate (1.76% at 12/31/18) due 2022	4	4		
Variable rates (1.79% to 1.85% at 12/31/18) due 2039-2042	78	78		
Total other long-term debt	309	309		
Unamortized debt discount	(4)	(5)		
Unamortized debt issuance expense	(9)	(9)		
Total long-term debt (annual interest requirement — \$48 million)	1,286	1,285	40.1%	45.6%
<b>Common Stockholder's Equity:</b>				
Common stock, without par value —				
Authorized — 20,000,000 shares				
Outstanding — 7,392,717 shares	678	678		
Paid-in capital	978	594		
Retained earnings	265	259		
Accumulated other comprehensive income	(1)	—		
Total common stockholder's equity	1,920	1,531	59.9	54.4
<b>Total Capitalization</b>	<b>\$ 3,206</b>	<b>\$ 2,816</b>	<b>100.0%</b>	<b>100.0%</b>

The accompanying notes are an integral part of these financial statements.



**STATEMENTS OF COMMON STOCKHOLDER'S EQUITY**  
**For the Years Ended December 31, 2018 and 2017**  
**Gulf Power Company Financial Statements and Notes**

	Number of Common Shares Issued	Common Stock	Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
<i>(in millions)</i>						
<b>Balance at December 31, 2016</b>	<b>6</b>	<b>503</b>	<b>589</b>	<b>296</b>	<b>1</b>	<b>1,389</b>
Net income after dividends on preference stock	—	—	—	135	—	135
Issuance of common stock	—	175	—	—	—	175
Capital contributions from parent company	—	—	5	—	—	5
Other comprehensive income (loss)	—	—	—	—	(1)	(1)
Cash dividends on common stock	—	—	—	(165)	—	(165)
Other	—	—	—	(7)	—	(7)
<b>Balance at December 31, 2017</b>	<b>6</b>	<b>678</b>	<b>594</b>	<b>259</b>	<b>—</b>	<b>1,531</b>
Net income after dividends on preference stock	—	—	—	160	—	160
Capital contributions from parent company	—	—	384	—	—	384
Cash dividends on common stock	—	—	—	(153)	—	(153)
Other	—	—	—	(1)	(1)	(2)
<b>Balance at December 31, 2018</b>	<b>6</b>	<b>\$ 678</b>	<b>\$ 978</b>	<b>\$ 265</b>	<b>\$ (1)</b>	<b>\$ 1,920</b>

The accompanying notes are an integral part of these financial statements.

NOTES TO FINANCIAL STATEMENTS  
Gulf Power Company Financial Statements and Notes

Index to the Notes to Financial Statements

<u>Note</u>		<u>Page</u>
1	<u>Summary of Significant Accounting Policies</u> .....	<u>11</u>
2	<u>Retirement Benefits</u> .....	<u>18</u>
3	<u>Contingencies and Regulatory Matters</u> .....	<u>27</u>
4	<u>Joint Ownership Agreements</u> .....	<u>30</u>
5	<u>Income Taxes</u> .....	<u>30</u>
6	<u>Financing</u> .....	<u>33</u>
7	<u>Commitments</u> .....	<u>34</u>
8	<u>Stock-Based Compensation</u> .....	<u>35</u>
9	<u>Fair Value Measurements</u> .....	<u>36</u>
10	<u>Derivatives</u> .....	<u>37</u>
11	<u>Revenue from Contracts with Customers</u> .....	<u>39</u>



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**General**

Gulf Power Company (the Company) is a wholly-owned subsidiary of The Southern Company (Southern Company), which is the parent company of the Company (through December 31, 2018), Alabama Power Company (Alabama Power), Georgia Power Company (Georgia Power), and Mississippi Power Company (Mississippi Power) (collectively, the traditional electric operating companies), as well as Southern Power Company and its subsidiaries (Southern Power), Southern Company Gas and its subsidiaries (Southern Company Gas), Southern Company Services, Inc. (SCS), Southern Communications Services, Inc. (Southern Linc), Southern Company Holdings, Inc., Southern Nuclear Operating Company, Inc., PowerSecure, Inc., and other direct and indirect subsidiaries (collectively, the Southern Company system). The traditional electric operating companies are vertically integrated utilities providing electric service in four Southeastern states. The Company provides electric service to retail customers in northwest Florida and to wholesale customers in the Southeast.

The Company is subject to regulation by the Federal Energy Regulatory Commission (FERC) and the Florida Public Service Commission (PSC). As such, the Company's financial statements reflect the effects of rate regulation in accordance with U.S. generally accepted accounting principles (GAAP) and comply with the accounting policies and practices prescribed by its regulatory commissions. The preparation of financial statements in conformity with GAAP requires the use of estimates, and the actual results may differ from those estimates. Certain prior years' data presented in the financial statements have been reclassified to conform to the current year presentation.

On January 1, 2019, Southern Company completed the sale of all of the capital stock of the Company to 700 Universe, LLC, a wholly-owned subsidiary of NextEra Energy, Inc. (NextEra Energy) for an aggregate cash purchase price of approximately \$5.8 billion (less \$1.3 billion of indebtedness assumed), subject to customary working capital adjustments. Upon completion of the sale, the Company is no longer a subsidiary of Southern Company.

**Recently Issued Accounting Standards**

***Revenue***

In 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Codification 606, *Revenue from Contracts with Customers* (ASC 606), replacing the existing accounting standard and industry-specific guidance for revenue recognition with a five-step model for recognizing and measuring revenue from contracts with customers. The underlying principle of the standard is to recognize revenue to depict the transfer of goods or services to customers at the amount expected to be collected. ASC 606 became effective on January 1, 2018 and the Company adopted it using the modified retrospective method applied to open contracts and only to the version of contracts in effect as of January 1, 2018. In accordance with the modified retrospective method, the Company's previously issued financial statements have not been restated to comply with ASC 606 and the Company did not have a cumulative-effect adjustment to retained earnings. The adoption of ASC 606 had no significant impact on the timing of revenue recognition compared to previously reported results; however, it requires enhanced disclosures regarding the nature, amount, timing, and uncertainty of revenue and the related cash flows arising from contracts with customers, which are included herein and in Note 11.

***Other***

In March 2017, the FASB issued Accounting Standards Update No. 2017-07, *Compensation – Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost* (ASU 2017-07). ASU 2017-07 requires that an employer report the service cost component in the same line item or items as other compensation costs and requires the other components of net periodic pension and postretirement benefit costs to be separately presented in the statements of income outside of income from operations. Additionally, only the service cost component is eligible for capitalization, when applicable. The Company adopted ASU 2017-07 effective January 1, 2018 with no material impact on its financial statements. ASU 2017-07 has been applied retrospectively, with the service cost component of net periodic benefit costs included in operations and maintenance expenses and all other components of net periodic benefit costs included in other income (expense), net in the statements of income for all periods presented. The Company used the practical expedient provided by ASU 2017-07, which permits an employer to use the amounts disclosed in its retirement benefits note for prior comparative periods as the estimation basis for applying the retrospective presentation requirements to those periods. The amounts of the other components of net periodic benefit costs reclassified for the prior periods are presented in Note 2. The presentation changes resulted in a decrease in operating income and an increase in other income for the year ended December 31, 2017. The requirement to limit capitalization to the service cost component of net periodic benefit costs has been applied on a prospective basis from the date of adoption.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

In August 2017, the FASB issued Accounting Standards Update No. 2017-12, *Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities* (ASU 2017-12). ASU 2017-12 makes more financial and non-financial hedging strategies eligible for hedge accounting, amends the related presentation and disclosure requirements, and simplifies hedge effectiveness assessment requirements. ASU 2017-12 is effective for fiscal years beginning after December 15, 2018, with early adoption permitted. The Company adopted ASU 2017-12 effective January 1, 2018 with no material impact on its financial statements. See Note 10 for disclosures required by ASU 2017-12.

On February 14, 2018, the FASB issued Accounting Standards Update No. 2018-02, *Income Statement – Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income* (ASU 2018-02) to address the application of Accounting Standards Codification 740, *Income Taxes* (ASC 740) to certain provisions of The Tax Cuts and Jobs Act, which became effective on January 1, 2018 (Tax Reform Legislation). ASU 2018-02 specifically addresses the ASC 740 requirement that the effect of a change in tax laws or rates on deferred tax assets and liabilities be included in income from continuing operations, even when the tax effects were initially recognized directly in other comprehensive income (OCI) at the previous rate, which strands the income tax rate differential in accumulated OCI (AOCI). The amendments in ASU 2018-02 allow a reclassification from accumulated OCI to retained earnings for stranded tax effects resulting from the Tax Reform Legislation. The Company adopted ASU 2018-02 effective January 1, 2018 with no material impact on its financial statements.

**Affiliate Transactions**

The Company has an agreement with SCS under which the following services are rendered to the Company at direct or allocated cost: general and design engineering, operations, purchasing, accounting, finance, treasury, tax, information technology, marketing, auditing, insurance and pension administration, human resources, systems and procedures, digital wireless communications, and other services with respect to business and operations, construction management, and transactions under the operating arrangement whereby the integrated generating resources of the traditional electric operating companies and Southern Power (excluding subsidiaries) are subject to joint commitment and dispatch in order to serve their combined load obligations (power pool). Costs for these services amounted to \$94 million and \$81 million during 2018 and 2017, respectively. Cost allocation methodologies used by SCS prior to the repeal of the Public Utility Holding Company Act of 1935, as amended, were approved by the U.S. Securities and Exchange Commission (SEC). Subsequently, additional cost allocation methodologies have been reported to the FERC and management believes they are reasonable. The FERC permits services to be rendered at cost by system service companies. See Note 7 under "Operating Leases" for information on leases of cellular tower space for the Company's digital wireless communications equipment.

The Company has operating agreements with Georgia Power and Mississippi Power under which the Company owns a portion of Plant Scherer and Plant Daniel, respectively. Georgia Power operates Plant Scherer and Mississippi Power operates Plant Daniel. The Company reimbursed Georgia Power \$8 million and \$11 million in 2018 and 2017, respectively, and Mississippi Power \$31 million in each of 2018 and 2017 for its proportionate share of related expenses. See Note 4 and Note 7 under "Operating Leases" for additional information.

Total power purchased from affiliates through the power pool, included in purchased power in the statements of income, totaled \$17 million and \$15 million in 2018 and 2017, respectively.

The Company has an agreement with Alabama Power under which Alabama Power made transmission system upgrades to ensure firm delivery of energy under a non-affiliate power purchase agreement (PPA) from a combined cycle plant located in Alabama. Payments by the Company to Alabama Power for the improvements were \$11 million in each of 2018 and 2017 and are expected to be approximately \$10 million annually for 2019 through 2023, when the PPA expires. These costs have been approved for recovery by the Florida PSC through the Company's purchased power capacity cost recovery clause and by the FERC in the transmission facilities cost allocation tariff.

The Company provides incidental services to and receives such services from other Southern Company subsidiaries which are generally minor in duration and amount. However, the Company received storm restoration assistance from other Southern Company subsidiaries totaling \$44 million in 2018. See Note 3 under "Retail Regulatory Matters – Storm Damage Cost Recovery" for additional information on Hurricane Michael impacts.

The traditional electric operating companies, including the Company, and Southern Power, may jointly enter into various types of wholesale energy, natural gas, and certain other contracts, either directly or through SCS, as agent. Each participating company may be jointly and severally liable for the obligations incurred under these agreements. See Note 7 under "Fuel and Purchased Power Agreements" for additional information.



NOTES (continued)  
Gulf Power Company Financial Statements and Notes

**Regulatory Assets and Liabilities**

The Company is subject to accounting requirements for the effects of rate regulation. Regulatory assets represent probable future revenues associated with certain costs that are expected to be recovered from customers through the ratemaking process. Regulatory liabilities represent probable future reductions in revenues associated with amounts that are expected to be credited to customers through the ratemaking process.

Regulatory assets and (liabilities) reflected in the balance sheets at December 31 relate to:

	2018	2017	Note
	(in millions)		
Property damage reserve	\$ 255	\$ (40)	(a)
Retiree benefit plans, net	160	166	(b,c)
PPA charges	97	119	(d,c)
Closure of ash ponds	91	80	(e,c)
Remaining book value of retired assets	60	65	(f)
Environmental remediation	48	52	(e,c)
Deferred income tax charges	30	31	(g)
Deferred return on transmission upgrades	25	25	(f)
Loss on reacquired debt	15	17	(h)
Asset retirement obligations, net	18	13	(g,c)
Other regulatory assets, net	9	36	(i)
Fuel-hedging assets, net	6	21	(j,c)
Deferred income tax credits	(382)	(458)	(k)
Other cost of removal obligations	(211)	(221)	(g)
Over recovered regulatory clause revenues	(48)	(11)	(l)
Total regulatory assets (liabilities), net	\$ 173	\$ (105)	

Note: The recovery and amortization periods for these regulatory assets and (liabilities) are as follows:

- (a) Recovery is expected to be determined by the Florida PSC in connection with a petition filed on February 26, 2019. See "Property Damage Reserve" herein and Note 3 for additional information.
- (b) Recovered and amortized over the average remaining service period, which may range up to 14 years. See Note 2 for additional information.
- (c) Not earning a return as offset in rate base by a corresponding asset or liability.
- (d) Recovered over the life of the PPA for periods up to five years.
- (e) Recovered through the environmental cost recovery clause when the remediation or the work is performed.
- (f) Recorded and recovered or amortized as approved by the Florida PSC with remaining periods up to 39 years.
- (g) Asset retirement and removal assets and liabilities are recorded, and deferred income tax assets are recorded, recovered, and amortized, over the remaining property lives, which may range up to 47 years. Asset retirement and removal assets and liabilities will be settled and trued up following completion of the related activities.
- (h) Recovered over either the remaining life of the original issue or, if refinanced, over the life of the new issue, which may range up to 40 years.
- (i) Comprised primarily of vacation pay and under recovered regulatory clause revenues. Other regulatory assets costs, with the exception of vacation pay, are recorded and recovered or amortized as approved by the Florida PSC. Vacation pay, including banked holiday pay, does not earn a return as offset in rate base by a corresponding liability; it is recorded as earned by employees and recovered as paid, generally within one year.
- (j) Fuel-hedging assets and liabilities are recorded over the life of the underlying hedged purchase contracts, which currently do not exceed two years. Upon final settlement, actual costs incurred are recovered through the fuel cost recovery clause.
- (k) Deferred income tax liabilities are amortized over the remaining property lives, which may range up to 47 years. Includes the deferred tax liabilities as a result of the Tax Reform Legislation. See Notes 3 and 5 for additional information.
- (l) Recorded and recovered or amortized as approved by the Florida PSC, generally within one year.

In the event that a portion of the Company's operations is no longer subject to applicable accounting rules for rate regulation, the Company would be required to write off to income or reclassify to accumulated OCI related regulatory assets and liabilities that are not specifically recoverable through regulated rates. In addition, the Company would be required to determine if any impairment to other assets, including plant, exists and write down the assets, if impaired, to their fair values. All regulatory assets and liabilities are to be reflected in rates. See Note 3 under "Retail Regulatory Matters" for additional information.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

**Revenues**

The Company generates revenues from a variety of sources which are accounted for under various revenue accounting guidance, including ASC 606, lease, derivative, and regulatory accounting. The Company has a diversified base of customers. No single customer or industry comprises 10% or more of revenues. The adoption of ASC 606 had no impact on the timing or amount of revenue recognized under previous guidance. See "Recently Adopted Accounting Standards – Revenue" herein and Note 11 for information regarding the Company's adoption of ASC 606 and related disclosures.

The majority of the revenues of the Company are generated from contracts with retail electric customers. Retail revenues recognized under ASC 606 are consistent with prior revenue recognition policies. These revenues, generated from the integrated service to deliver electricity when and if called upon by the customer, are recognized as a single performance obligation satisfied over time, at a tariff rate, and as electricity is delivered to the customer during the month. Unbilled revenues related to retail sales are accrued at the end of each fiscal period. Retail rates may include provisions to adjust billings for fluctuations in fuel costs, the energy component of purchased power costs, and certain other costs. The Company continuously monitors the over or under recovered fuel cost balance in light of the inherent variability in fuel costs. The Company is required to notify the Florida PSC if the projected fuel cost over or under recovery is expected to exceed 10% of the projected fuel revenue applicable for the period and indicate if an adjustment to the fuel cost recovery factor is being requested. The Company has similar retail cost recovery clauses for energy conservation costs, purchased power capacity costs, and environmental compliance costs. Revenues are adjusted for differences between these actual costs and amounts billed in current regulated rates. Under or over recovered regulatory clause revenues are recorded in the balance sheets and are recovered from or returned to customers, respectively, through adjustments to the billing factors. Annually, the Company petitions for recovery of projected costs including any true-up amounts from prior periods, and approved rates are implemented each January. See Note 3 for additional information regarding regulatory matters of the Company.

Wholesale capacity revenues from PPAs are recognized either on a levelized basis over the appropriate contract period or the amount billable under the contract terms. Energy and other revenues are generally recognized as services are provided. The accounting for these revenues under ASC 606 is consistent with prior revenue recognition policies. The contracts for capacity and energy in a wholesale PPA have multiple performance obligations where the contract's total transaction price is allocated to each performance obligation based on the standalone selling price. The standalone selling price is primarily determined by the price charged to customers for the specific goods or services transferred with the performance obligations. The Company recognizes revenue as the performance obligations are satisfied over time, as electricity is delivered to the customer, or as generation capacity is available to the customer.

For both retail and wholesale revenues, the Company generally has a right to consideration in an amount that corresponds directly with the value to the customer of the entity's performance completed to date and may recognize revenue in the amount to which the entity has a right to invoice and has elected to recognize revenue for its sales of electricity and capacity using the invoice practical expedient. In addition, payment for goods and services rendered is typically due in the subsequent month following satisfaction of the Company's performance obligation.

**Fuel Costs**

Fuel costs are expensed as the fuel is used. Fuel expense generally includes fuel transportation costs and the cost of purchased emissions allowances as they are used. Fuel expense and emissions allowance costs are recovered by the Company through the fuel cost recovery and environmental cost recovery rates, respectively, approved annually by the Florida PSC.

**Income Taxes**

The Company uses the liability method of accounting for deferred income taxes and provides deferred income taxes for all significant income tax temporary differences. Federal investment tax credits (ITC) utilized are deferred and amortized to income over the average life of the related property and state ITCs are recognized in the period in which the credit is claimed on the state income tax return.

The Company recognizes tax positions that are "more likely than not" of being sustained upon examination by the appropriate taxing authorities. See Note 5 under "Unrecognized Tax Benefits" for additional information.

**Other Taxes**

Taxes imposed on and collected from customers on behalf of governmental agencies are presented net on the Company's statements of income and are excluded from the transaction price in determining the revenue related to contracts with a customer accounted for under ASC 606.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

**Property, Plant, and Equipment**

Property, plant, and equipment is stated at original cost less any regulatory disallowances and impairments. Original cost includes: materials; labor; minor items of property; appropriate administrative and general costs; payroll-related costs such as taxes, pensions, and other benefits; and the interest capitalized and cost of equity funds used during construction.

The Company's property, plant, and equipment in service consisted of the following at December 31:

	2018	2017
	<i>(in millions)</i>	
Generation	\$ 3,064	\$ 3,005
Transmission	737	720
Distribution	1,385	1,282
General	204	188
Plant acquisition adjustment	1	1
Total plant in service	\$ 5,391	\$ 5,196

The cost of replacements of property, exclusive of minor items of property, is capitalized. The cost of maintenance, repairs, and replacement of minor items of property is charged to other operations and maintenance expenses as incurred or performed.

**Depreciation and Amortization**

Depreciation of the original cost of utility plant in service is provided primarily by using composite straight-line rates, which approximated 3.7% for all years presented. Depreciation studies are conducted periodically to update the composite rates. These studies are approved by the Florida PSC and the FERC. When property, plant, and equipment subject to composite depreciation is retired or otherwise disposed of in the normal course of business, its original cost, together with the cost of removal, less salvage, is charged to accumulated depreciation. For other property dispositions, the applicable cost and accumulated depreciation are removed from the balance sheet accounts, and a gain or loss is recognized. Minor items of property included in the original cost of the asset are retired when the related property unit is retired. As authorized in a settlement agreement approved by the Florida PSC in 2013, the Company reduced depreciation and recorded a regulatory asset totaling \$62.5 million between January 2014 and June 2017. See Note 3 under "Retail Regulatory Matters – Retail Base Rate Cases" for additional information.

**Asset Retirement Obligations and Other Costs of Removal**

Asset retirement obligations (AROs) are computed as the present value of the estimated costs for an asset's future retirement and are recorded in the period in which the liability is incurred. The estimated costs are capitalized as part of the related long-lived asset and depreciated over the asset's useful life. In the absence of quoted market prices, AROs are estimated using present value techniques in which estimates of future cash outlays associated with the asset retirements are discounted using a credit-adjusted risk-free rate. Estimates of the timing and amounts of future cash outlays are based on projections of when and how the assets will be retired and the cost of future removal activities. The Company has received an order from the Florida PSC allowing the continued accrual of other future retirement costs for long-lived assets that the Company does not have a legal obligation to retire. Accordingly, the accumulated removal costs for these obligations are reflected in the balance sheets as a regulatory liability.

The liability for AROs primarily relates to facilities that are subject to the Disposal of Coal Combustion Residuals from Electric Utilities final rule published by the U.S. Environmental Protection Agency (EPA) in 2015 (CCR Rule), principally ash ponds, and to the closure of an ash pond at Plant Scholz. In addition, the Company has retirement obligations related to combustion turbines at its Pea Ridge facility, various landfill sites, a barge unloading dock, asbestos removal, and disposal of polychlorinated biphenyls in certain transformers.

The Company also has identified retirement obligations related to certain transmission and distribution facilities, certain wireless communication towers, and certain structures authorized by the U.S. Army Corps of Engineers. However, liabilities for the removal of these assets have not been recorded because the settlement timing for the retirement obligations related to these assets is indeterminable and, therefore, the fair value of the retirement obligations cannot be reasonably estimated. A liability for these retirement obligations will be recognized when sufficient information becomes available to support a reasonable estimation of the ARO.

The Company will continue to recognize in the statements of income allowed removal costs in accordance with its regulatory treatment. Any differences between costs recognized in accordance with accounting standards related to asset retirement and



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

environmental obligations and those reflected in rates are recognized as either a regulatory asset or liability, as ordered by the Florida PSC, and are reflected in the balance sheets.

Details of the AROs included on the balance sheets are as follows:

	2018	2017
	<i>(in millions)</i>	
Balance at beginning of year	\$ 142	\$ 136
Liabilities settled	(32)	(8)
Accretion	2	2
Cash flow revisions	57	12
Balance at end of year	\$ 169	\$ 142

In 2018, the Company recorded an increase of approximately \$57 million primarily related to its AROs subject to the CCR Rule, including an increase of approximately \$46 million related to closure of an ash pond at Plant Smith. The revised cost estimates were based on detailed design quantities and costs and reflect the estimated amount of ash to be excavated and water management requirements necessary to support closure. These factors also impact the timing of future cash outlays.

In December 2018, the Company also recorded an increase of approximately \$15 million related to Plant Scherer Unit 3. During the second half of 2018, Georgia Power completed a strategic assessment related to its plans to close the ash ponds at all its generating plants, including Plant Scherer Unit 3, which is jointly owned with the Company, in compliance with the CCR Rule and the related state of Georgia rule. This assessment included engineering and constructability studies related to design assumptions for ash pond closures and advanced engineering methods. The results indicated that additional closure costs will be required to close these ash ponds primarily due to changes in closure strategies, the estimated amount of ash to be excavated, and additional water management requirements to support closure strategies. These factors also impact the timing of future cash outlays.

These increases were partially offset by a decrease of approximately \$4 million primarily related to the closure of an ash pond at Plant Scholz.

The cost estimates for AROs related to coal combustion residuals are based on information as of December 31, 2018 using various assumptions related to closure and post-closure costs, timing of future cash outlays, inflation and discount rates, and the potential methods for complying with the CCR Rule requirements for closure for those facilities impacted by the CCR Rule. The Company expects to continue to periodically update these cost estimates, which could increase further, as additional information becomes available. Absent continued recovery of ARO costs through regulated rates, the Company's results of operations, cash flows, and financial condition could be materially impacted. The ultimate outcome of this matter cannot be determined at this time.

#### **Allowance for Funds Used During Construction**

The Company records allowance for funds used during construction (AFUDC), which represents the estimated debt and equity costs of capital funds that are necessary to finance the construction of new regulated facilities. While cash is not realized currently, AFUDC increases the revenue requirement and is recovered over the service life of the asset through a higher rate base and higher depreciation. The equity component of AFUDC is not taxable.

#### **Impairment of Long-Lived Assets and Intangibles**

The Company evaluates long-lived assets for impairment when events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. The determination of whether an impairment has occurred is based on either a specific regulatory disallowance or an estimate of undiscounted future cash flows attributable to the assets, as compared with the carrying value of the assets. If an impairment has occurred, the amount of the impairment recognized is determined by either the amount of regulatory disallowance or by estimating the fair value of the assets and recording a loss if the carrying value is greater than the fair value. For assets identified as held for sale, the carrying value is compared to the estimated fair value less the cost to sell in order to determine if an impairment loss is required. Until the assets are disposed of, their estimated fair value is re-evaluated when circumstances or events change.

See Note 3 under "Retail Regulatory Matters – Retail Base Rate Cases" for information regarding a regulatory disallowance recorded in 2017.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

**Property Damage Reserve**

The Company accrues for the cost of repairing damages from major storms and other uninsured property damages, including uninsured damages to transmission and distribution facilities, generation facilities, and other property. The costs of such damage are charged to the reserve. The Florida PSC approved annual accrual to the property damage reserve is \$3.5 million, with a target level for the reserve between \$48 million and \$55 million. In accordance with a settlement agreement approved by the Florida PSC on April 4, 2017 (2017 Rate Case Settlement Agreement), the Company suspended further property damage reserve accruals effective April 2017. The Company may make discretionary accruals and is required to resume accruals of \$3.5 million annually if the reserve falls below zero. The Company accrued total expenses of \$28.2 million in 2018 and \$3.5 million in 2017. As of December 31, 2018, the Company's property damage reserve had a deficit balance of approximately \$255 million, of which \$34 million and \$221 million are included in property damage reserve and other regulatory assets, deferred on the balance sheet, respectively. As of December 31, 2017, the balance in the Company's property damage reserve totaled approximately \$40 million, which is included in other regulatory liabilities, deferred on the balance sheet.

When the property damage reserve is inadequate to cover the cost of major storms, the Florida PSC can authorize a storm cost recovery surcharge to be applied to customer bills. As authorized in the 2017 Rate Case Settlement Agreement, the Company may initiate a storm surcharge to recover costs associated with any tropical systems named by the National Hurricane Center or other catastrophic storm events that reduce the property damage reserve in the aggregate by approximately \$31 million (75% of the April 1, 2017 balance) or more. The storm surcharge would begin, on an interim basis, 60 days following the filing of a cost recovery petition, would be limited to \$4.00/month for a 1,000 kilowatt-hour residential customer unless the Company incurs in excess of \$100 million in qualified storm recovery costs in a calendar year, and would replenish the property damage reserve to approximately \$40 million. See Note 3 under "Retail Regulatory Matters – Retail Base Rate Cases" for information on a storm surcharge request related to Hurricane Michael.

**Injuries and Damages Reserve**

The Company is subject to claims and lawsuits arising in the ordinary course of business. As permitted by the Florida PSC, the Company accrues \$1.6 million annually for the uninsured costs of injuries and damages. The Florida PSC has also given the Company the flexibility to increase its annual accrual above \$1.6 million to the extent the balance in the reserve does not exceed \$2 million and to defer expense recognition of liabilities greater than the balance in the reserve. The cost of settling claims is charged to the reserve. The injuries and damages reserve totaled \$2.8 million and \$2.1 million at December 31, 2018 and 2017, respectively, of which \$1.6 million is included in other current liabilities each year. There were no liabilities in excess of the reserve balance at December 31, 2018 or 2017.

**Long-Term Service Agreement**

The Company has entered into a long-term service agreement (LTSA) for the purpose of securing maintenance support for a combined cycle generating unit at Plant Smith. The LTSA covers all planned inspections on the covered equipment, which generally includes the cost of all labor and materials. The LTSA also obligates the counterparty to cover the costs of unplanned maintenance on the covered equipment subject to limits and scope specified in the contract.

Payments made under the LTSA for the performance of any planned inspections or unplanned capital maintenance are recorded in the statements of cash flows as investing activities. Receipts of major parts into materials and supplies inventory prior to planned inspections are treated as noncash transactions in the statements of cash flows. Any payment made prior to the work being performed are recorded as prepayments in noncurrent assets on the balance sheets. At the time work is performed, an appropriate amount is transferred from the prepayment and recorded as property, plant, and equipment or expensed.

**Cash and Cash Equivalents**

For purposes of the financial statements, temporary cash investments are considered cash equivalents. Temporary cash investments are securities with original maturities of 90 or less.

**Materials and Supplies**

Materials and supplies generally includes the average cost of transmission, distribution, and generating plant materials. Materials are recorded to inventory when purchased and then expensed or capitalized to plant, as appropriate, at weighted average cost when installed.

**Fuel Inventory**

Fuel inventory includes the average cost of oil, natural gas, coal, transportation, and emissions allowances. Fuel is recorded to inventory when purchased and then expensed, at weighted average cost, as used. Fuel expense and emissions allowance costs are



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

recovered by the Company through the fuel cost recovery and environmental cost recovery rates, respectively, approved annually by the Florida PSC. Emissions allowances granted by the EPA are included in inventory at zero cost.

**Financial Instruments**

The Company uses derivative financial instruments to limit exposure to fluctuations in interest rates, the prices of certain fuel purchases, and electricity purchases and sales. All derivative financial instruments are recognized as either assets or liabilities on the balance sheets (included in "Other" or shown separately as "Risk Management Activities") and are measured at fair value. See Note 9 for additional information regarding fair value. Substantially all of the Company's bulk energy purchases and sales contracts that meet the definition of a derivative are excluded from fair value accounting requirements because they qualify for the "normal" scope exception, and are accounted for under the accrual method. Derivative contracts that qualify as cash flow hedges of anticipated transactions or are recoverable through the Florida PSC approved fuel-hedging program result in the deferral of related gains and losses in AOCI or regulatory assets and liabilities, respectively, until the hedged transactions occur. Any ineffectiveness arising from cash flow hedges is recognized currently in net income. Other derivative contracts that qualify as fair value hedges are marked to market through current period income and are recorded on a net basis in the statements of income. Cash flows from derivatives are classified on the statement of cash flows in the same category as the hedged item. The Florida PSC extended the moratorium on the Company's fuel-hedging program until January 1, 2021 in connection with the 2017 Rate Case Settlement Agreement. The moratorium does not have an impact on the recovery of existing hedges entered into under the previously-approved hedging program. See Note 10 for additional information regarding derivatives.

The Company offsets fair value amounts recognized for multiple derivative instruments executed with the same counterparty under a netting arrangement. The Company had no outstanding collateral repayment obligations or rights to reclaim collateral arising from derivative instruments recognized at December 31, 2018.

The Company is exposed to potential losses related to financial instruments in the event of counterparties' nonperformance. The Company has established risk management policies and controls to determine and monitor the creditworthiness of counterparties in order to mitigate the Company's exposure to counterparty credit risk.

**Provision for Uncollectible Accounts**

All customers of the Company are billed monthly. For the majority of receivables, a provision for uncollectible accounts is established based on historical collection experience and other factors. For the remaining receivables, if the Company is aware of a specific customer's inability to pay, a provision for uncollectible accounts is recorded to reduce the receivable balance to the amount reasonably expected to be collected. If circumstances change, the estimate of the recoverability of accounts receivable could change as well. Circumstances that could affect this estimate include, but are not limited to, customer credit issues, customer deposits, and general economic conditions. Customers' accounts are written off once they are deemed to be uncollectible. For all periods presented, uncollectible accounts averaged less than 1% of revenues.

**Comprehensive Income**

The objective of comprehensive income is to report a measure of all changes in common stock equity of an enterprise that result from transactions and other economic events of the period other than transactions with owners. Comprehensive income consists of net income, changes in the fair value of qualifying cash flow hedges, and reclassifications for amounts included in net income.

**2. RETIREMENT BENEFITS**

The Company has a qualified defined benefit, trustee, pension plan covering substantially all employees. This qualified defined benefit pension plan is funded in accordance with requirements of the Employee Retirement Income Security Act of 1974, as amended (ERISA). No contributions to the qualified pension plan were made for the year ended December 31, 2018 and no mandatory contributions to the qualified pension plan are anticipated for the year ending December 31, 2019. The Company also provides certain non-qualified defined benefits for a select group of management and highly compensated employees, which are funded on a cash basis. In addition, the Company provides certain medical care and life insurance benefits for retired employees through other postretirement benefit plans. The Company funds its other postretirement trusts to the extent required by the FERC. For the year ending December 31, 2019, no other postretirement trust contributions are expected.

**Actuarial Assumptions**

The weighted average rates assumed in the actuarial calculations used to determine both the net periodic costs for the pension and other postretirement benefit plans for the following year and the benefit obligations as of the measurement date are presented below.



NOTES (continued)  
Gulf Power Company Financial Statements and Notes

Assumptions used to determine net periodic costs:	2018	2017
<b>Pension plans</b>		
Discount rate – benefit obligations	3.82%	4.46%
Discount rate – interest costs	3.48	3.82
Discount rate – service costs	3.98	4.81
Expected long-term return on plan assets	7.95	7.95
Annual salary increase	4.46	4.46
<b>Other postretirement benefit plans</b>		
Discount rate – benefit obligations	3.69%	4.25%
Discount rate – interest costs	3.30	3.56
Discount rate – service costs	3.90	4.62
Expected long-term return on plan assets	7.81	7.81
Annual salary increase	4.46	4.46

Assumptions used to determine benefit obligations:	2018	2017
<b>Pension plans</b>		
Discount rate	4.51%	3.82%
Annual salary increase	4.46	4.46
<b>Other postretirement benefit plans</b>		
Discount rate	4.37%	3.69%
Annual salary increase	4.46	4.46

The Company estimates the expected rate of return on pension plan and other postretirement benefit plan assets using a financial model to project the expected return on each current investment portfolio. The analysis projects an expected rate of return on each of the different asset classes in order to arrive at the expected return on the entire portfolio relying on each trust's target asset allocation and reasonable capital market assumptions. The financial model is based on four key inputs: anticipated returns by asset class (based in part on historical returns), each trust's target asset allocation, an anticipated inflation rate, and the projected impact of a periodic rebalancing of each trust's portfolio.

An additional assumption used in measuring the accumulated other postretirement benefit obligations (APBO) was a weighted average medical care cost trend rate. The weighted average medical care cost trend rates used in measuring the APBO as of December 31, 2018 were as follows:

	Initial Cost Trend Rate	Ultimate Cost Trend Rate	Year That Ultimate Rate is Reached
Pre-65	6.50%	4.50%	2028
Post-65 medical	5.00	4.50	2028
Post-65 prescription	8.00	4.50	2028

An annual increase or decrease in the assumed medical care cost trend rate of 1% would affect the APBO and the service and interest cost components at December 31, 2018 as follows:

	1 Percent Increase	1 Percent Decrease
	<i>(in millions)</i>	
Benefit obligation	\$ 2	\$ 2
Service and interest costs	—	—

**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

**Pension Plans**

The total accumulated benefit obligation for the pension plans was \$481 million at December 31, 2018 and \$524 million at December 31, 2017. Changes in the projected benefit obligations and the fair value of plan assets during the plan years ended December 31, 2018 and 2017 were as follows:

	2018	2017
	<i>(in millions)</i>	
<b>Change in benefit obligation</b>		
Benefit obligation at beginning of year	\$ 587	\$ 517
Service cost	16	13
Interest cost	20	19
Benefits paid	(30)	(20)
Actuarial (gain) loss	(67)	58
Balance at end of year	526	587
<b>Change in plan assets</b>		
Fair value of plan assets at beginning of year	553	491
Actual return (loss) on plan assets	(40)	81
Employer contributions	9	1
Benefits paid	(30)	(20)
Fair value of plan assets at end of year	492	553
Accrued liability	\$ (34)	\$ (34)

At December 31, 2018, the projected benefit obligations for the qualified and non-qualified pension plans were \$515 million and \$11 million, respectively. All pension plan assets are related to the qualified pension plan.

Amounts recognized in the balance sheets at December 31, 2018 and 2017 related to the Company's pension plans consist of the following:

	2018	2017
	<i>(in millions)</i>	
Other regulatory assets, deferred	\$ 164	\$ 160
Other current liabilities	(1)	(1)
Employee benefit obligations	(33)	(33)

Presented below are the amounts included in regulatory assets at December 31, 2018 and 2017 related to the defined benefit pension plans that had not yet been recognized in net periodic pension cost along with the estimated amortization of such amounts for 2019.

	2018	2017	Estimated Amortization in 2019
	<i>(in millions)</i>		
Prior service cost	\$ 2	\$ 2	\$ —
Net (gain) loss	162	158	5
Regulatory assets	\$ 164	\$ 160	



NOTES (continued)  
Gulf Power Company Financial Statements and Notes

The changes in the balance of regulatory assets related to the defined benefit pension plans for the years ended December 31, 2018 and 2017 are presented in the following table:

	2018	2017
	<i>(in millions)</i>	
<b>Regulatory assets:</b>		
Beginning balance	\$ 160	\$ 153
Net (gain) loss	14	15
Reclassification adjustments:		
Amortization of prior service costs	—	(1)
Amortization of net gain (loss)	(10)	(7)
Total reclassification adjustments	(10)	(8)
Total change	4	7
Ending balance	\$ 164	\$ 160

Components of net periodic pension cost were as follows:

	2018	2017
	<i>(in millions)</i>	
Service cost	\$ 16	\$ 13
Interest cost	20	19
Expected return on plan assets	(40)	(38)
Recognized net (gain) loss	10	7
Net amortization	—	1
Net periodic pension cost	\$ 6	\$ 2

Net periodic pension cost is the sum of service cost, interest cost, and other costs netted against the expected return on plan assets. The expected return on plan assets is determined by multiplying the expected rate of return on plan assets and the market-related value of plan assets. In determining the market-related value of plan assets, the Company has elected to amortize changes in the market value of all plan assets over five years rather than recognize the changes immediately. As a result, the accounting value of plan assets that is used to calculate the expected return on plan assets differs from the current fair value of the plan assets.

Future benefit payments reflect expected future service and are estimated based on assumptions used to measure the projected benefit obligation for the pension plans. At December 31, 2018, estimated benefit payments were as follows:

	Benefit Payments
	<i>(in millions)</i>
2019	\$ 26
2020	26
2021	26
2022	27
2023	28
2024 to 2028	151

NOTES (continued)  
Gulf Power Company Financial Statements and Notes

**Other Postretirement Benefits**

Changes in the APBO and in the fair value of plan assets during the plan years ended December 31, 2018 and 2017 were as follows:

	2018	2017
	<i>(in millions)</i>	
<b>Change in benefit obligation</b>		
Benefit obligation at beginning of year	\$ 83	\$ 83
Service cost	1	1
Interest cost	3	3
Benefits paid	(4)	(5)
Actuarial (gain) loss	(14)	1
Balance at end of year	69	83
<b>Change in plan assets</b>		
Fair value of plan assets at beginning of year	20	18
Actual return (loss) on plan assets	(1)	3
Employer contributions	2	4
Benefits paid	(4)	(5)
Fair value of plan assets at end of year	17	20
Accrued liability	\$ (52)	\$ (63)

Amounts recognized in the balance sheets at December 31, 2018 and 2017 related to the Company's other postretirement benefit plans consist of the following:

	2018	2017
	<i>(in millions)</i>	
Other regulatory assets, deferred	\$ —	\$ 8
Other current liabilities	(1)	(1)
Other regulatory liabilities, deferred	(4)	(2)
Employee benefit obligations	(51)	(62)

Approximately \$(4) million and \$6 million was included in net regulatory (liabilities) assets at December 31, 2018 and 2017, respectively, related to the net loss for the other postretirement benefit plans that had not yet been recognized in net periodic other postretirement benefit cost. The estimated amortization of such amounts for 2019 is immaterial.

The changes in the balance of net regulatory assets (liabilities) related to the other postretirement benefit plans for the plan years ended December 31, 2018 and 2017 are presented in the following table:

	2018	2017
	<i>(in millions)</i>	
<b>Net regulatory assets (liabilities):</b>		
Beginning balance	\$ 6	\$ 7
Net (gain) loss	(10)	(1)
Ending balance	\$ (4)	\$ 6



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

Components of the other postretirement benefit plans' net periodic cost were as follows:

	2018	2017
	<i>(in millions)</i>	
Service cost	\$ 1	\$ 1
Interest cost	3	3
Expected return on plan assets	(2)	(1)
Net periodic postretirement benefit cost	\$ 2	\$ 3

Future benefit payments, including prescription drug benefits, reflect expected future service and are estimated based on assumptions used to measure the APBO for the other postretirement benefit plans. Estimated benefit payments are reduced by drug subsidy receipts expected as a result of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 as follows:

	Benefit Payments	Subsidy Receipts	Total
	<i>(in millions)</i>		
2019	\$ 6	\$ —	\$ 6
2020	5	—	5
2021	5	—	5
2022	5	—	5
2023	5	(1)	4
2024 to 2028	25	(2)	23

**Benefit Plan Assets**

Pension plan and other postretirement benefit plan assets are managed and invested in accordance with all applicable requirements, including ERISA and the Internal Revenue Code of 1986, as amended. The Company's investment policies for both the pension plan and the other postretirement benefit plans cover a diversified mix of assets, as described below. Derivative instruments may be used to gain efficient exposure to the various asset classes and as hedging tools. The Company minimizes the risk of large losses primarily through diversification but also monitors and manages other aspects of risk.

**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

The composition of the Company's pension plan and other postretirement benefit plan assets as of December 31, 2018 and 2017, along with the targeted mix of assets for each plan, is presented below:

	Target	2018	2017
<b>Pension plan assets:</b>			
Domestic equity	26%	28%	31%
International equity	25	25	25
Fixed income	23	24	24
Special situations	3	1	1
Real estate investments	14	15	13
Private equity	9	7	6
Total	100%	100%	100%
<b>Other postretirement benefit plan assets:</b>			
Domestic equity	25%	27%	30%
International equity	24	24	24
Domestic fixed income	25	26	26
Special situations	3	1	1
Real estate investments	14	15	13
Private equity	9	7	6
Total	100%	100%	100%

The investment strategy for plan assets related to the Company's qualified pension plan is to be broadly diversified across major asset classes. The asset allocation is established after consideration of various factors that affect the assets and liabilities of the pension plan including, but not limited to, historical and expected returns and interest rates, volatility, correlations of asset classes, the current level of assets and liabilities, and the assumed growth in assets and liabilities. Because a significant portion of the liability of the pension plan is long-term in nature, the assets are invested consistent with long-term investment expectations for return and risk. To manage the actual asset class exposures relative to the target asset allocation, the Company employs a formal rebalancing program. As additional risk management, external investment managers and service providers are subject to written guidelines to ensure appropriate and prudent investment practices. Management believes the portfolio is well-diversified with no significant concentrations of risk.

**Investment Strategies**

Detailed below is a description of the investment strategies for each major asset category for the pension and other postretirement benefit plans disclosed above:

- **Domestic equity.** A mix of large and small capitalization stocks with generally an equal distribution of value and growth attributes, managed both actively and through passive index approaches.
- **International equity.** A mix of growth stocks and value stocks with both developed and emerging market exposure, managed both actively and through passive index approaches.
- **Fixed income.** A mix of domestic and international bonds.
- **Special situations.** Investments in opportunistic strategies with the objective of diversifying and enhancing returns and exploiting short-term inefficiencies as well as investments in promising new strategies of a longer-term nature.
- **Real estate.** Investments in traditional private market, equity-oriented investments in real properties (indirectly through pooled funds or partnerships) and in publicly traded real estate securities.
- **Private equity.** Investments in private partnerships that invest in private or public securities typically through privately-negotiated and/or structured transactions, including leveraged buyouts, venture capital, and distressed debt.

**Benefit Plan Asset Fair Values**

Following are the fair value measurements for the pension plan and the other postretirement benefit plan assets as of December 31, 2018 and 2017. The fair values presented are prepared in accordance with GAAP. For purposes of determining the fair value of the pension plan and other postretirement benefit plan assets and the appropriate level designation, management



NOTES (continued)  
Gulf Power Company Financial Statements and Notes

relies on information provided by the plan's trustee. This information is reviewed and evaluated by management with changes made to the trustee information as appropriate.

Valuation methods of the primary fair value measurements disclosed in the following tables are as follows:

- **Domestic and international equity.** Investments in equity securities such as common stocks, American depositary receipts, and real estate investment trusts that trade on a public exchange are classified as Level 1 investments and are valued at the closing price in the active market. Equity funds with unpublished prices (i.e. pooled funds) are valued as Level 2, when the underlying holdings are comprised of Level 1 or Level 2 equity securities.
- **Fixed income.** Investments in fixed income securities are generally classified as Level 2 investments and are valued based on prices reported in the market place. Additionally, the value of fixed income securities takes into consideration certain items such as broker quotes, spreads, yield curves, interest rates, and discount rates that apply to the term of a specific instrument.
- **Real estate, private equity, and special situations.** Investments in real estate, private equity, and special situations are generally classified as Net Asset Value as a Practical Expedient, since the underlying assets typically do not have publicly available observable inputs. The fund manager values the assets using various inputs and techniques depending on the nature of the underlying investments. Techniques may include purchase multiples for comparable transactions, comparable public company trading multiples, discounted cash flow analysis, prevailing market capitalization rates, recent sales of comparable investments, and independent third-party appraisals. The fair value of partnerships is determined by aggregating the value of the underlying assets less liabilities.

The fair values of pension plan assets as of December 31, 2018 and 2017 are presented below. These fair values exclude cash, receivables related to investment income and pending investments sales, and payables related to pending investment purchases. The Company did not have any investments classified as Level 3 at December 31, 2018 or 2017.

	Fair Value Measurements Using				Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Net Asset Value as a Practical Expedient (NAV)		
<b>At December 31, 2018:</b>					
	(in millions)				
<b>Assets:</b>					
Domestic equity <sup>(*)</sup>	\$ 89	\$ 44	\$ —	\$	133
International equity <sup>(*)</sup>	57	56	—		113
<b>Fixed income:</b>					
U.S. Treasury, government, and agency bonds	—	39	—		39
Corporate bonds	—	51	—		51
Pooled funds	—	28	—		28
Cash equivalents and other	11	—	—		11
Real estate investments	18	—	58		76
Special situations	—	—	7		7
Private equity	—	—	35		35
<b>Total</b>	<b>\$ 175</b>	<b>\$ 218</b>	<b>\$ 100</b>	<b>\$</b>	<b>493</b>

(\*) Level 1 securities consist of actively traded stocks while Level 2 securities consist of pooled funds.

NOTES (continued)  
Gulf Power Company Financial Statements and Notes

At December 31, 2017:	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Net Asset Value as a Practical Expedient (NAV)	
	(in millions)			
Assets:				
Domestic equity <sup>(*)</sup>	\$ 112	\$ 54	\$ —	\$ 166
International equity <sup>(*)</sup>	72	65	—	137
Fixed income:				
U.S. Treasury, government, and agency bonds	—	39	—	39
Corporate bonds	—	57	—	57
Pooled funds	—	30	—	30
Cash equivalents and other	10	—	—	10
Real estate investments	22	—	55	77
Special situations	—	—	8	8
Private equity	—	—	31	31
Total	\$ 216	\$ 245	\$ 94	\$ 555

(\*) Level 1 securities consist of actively traded stocks while Level 2 securities consist of pooled funds.

The fair values of other postretirement benefit plan assets as of December 31, 2018 and 2017 are presented below. These fair value measurements exclude cash, receivables related to investment income and pending investments sales, and payables related to pending investment purchases. The Company did not have any investments classified as Level 3 at December 31, 2018 or 2017.

At December 31, 2018:	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Net Asset Value as a Practical Expedient (NAV)	
	(in millions)			
Assets:				
Domestic equity <sup>(*)</sup>	\$ 3	\$ 2	\$ —	\$ 5
International equity <sup>(*)</sup>	2	2	—	4
Fixed income:				
U.S. Treasury, government, and agency bonds	—	1	—	1
Corporate bonds	—	2	—	2
Pooled funds	—	1	—	1
Cash equivalents and other	1	—	—	1
Real estate investments	1	—	2	3
Private equity	—	—	1	1
Total	\$ 7	\$ 8	\$ 3	\$ 18

(\*) Level 1 securities consist of actively traded stocks while Level 2 securities consist of pooled funds.



NOTES (continued)  
Gulf Power Company Financial Statements and Notes

At December 31, 2017:	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Net Asset Value as a Practical Expedient (NAV)	
	(in millions)			
Assets:				
Domestic equity <sup>(*)</sup>	\$ 4	\$ 2	\$ —	\$ 6
International equity <sup>(*)</sup>	2	2	—	4
Fixed income:				
U.S. Treasury, government, and agency bonds	—	1	—	1
Corporate bonds	—	2	—	2
Pooled funds	—	1	—	1
Cash equivalents and other	1	—	—	1
Real estate investments	1	—	2	3
Private equity	—	—	1	1
Total	\$ 8	\$ 8	\$ 3	\$ 19

(\*) Level 1 securities consist of actively traded stocks while Level 2 securities consist of pooled funds.

#### Employee Savings Plan

The Company also sponsors a 401(k) defined contribution plan covering substantially all employees and provides matching contributions up to specified percentages of an employee's eligible pay. Total matching contributions made to the plan for 2018 and 2017 were \$5 million each year.

### 3. CONTINGENCIES AND REGULATORY MATTERS

#### General Litigation Matters

The Company is subject to certain claims and legal actions arising in the ordinary course of business. In addition, the Company's business activities are subject to extensive governmental regulation related to public health and the environment, such as laws and regulations governing air, water, land, and protection of other natural resources. Litigation over environmental issues and claims of various types, including property damage, personal injury, common law nuisance, and citizen enforcement of environmental laws and regulations has occurred throughout the U.S. This litigation has included claims for damages alleged to have been caused by carbon dioxide and other emissions, CCR, and alleged exposure to hazardous materials, and/or requests for injunctive relief in connection with such matters.

The ultimate outcome of such pending or potential litigation against the Company cannot be predicted at this time; however, for current proceedings not specifically reported herein, management does not anticipate that the ultimate liabilities, if any, arising from such current proceedings would have a material effect on the Company's financial statements.

#### Environmental Matters

##### Environmental Remediation

The Company must comply with environmental laws and regulations governing the handling and disposal of waste and releases of hazardous substances. Under these various laws and regulations, the Company could incur substantial costs to clean up affected sites. The Company received authority from the Florida PSC to recover approved environmental compliance costs through the environmental cost recovery clause. The Florida PSC reviews costs and adjusts rates up or down annually.

The Company recognizes a liability for environmental remediation costs only when it determines a loss is probable and reasonably estimable. At December 31, 2018, the Company's environmental remediation liability included estimated costs of environmental remediation projects of approximately \$48 million, of which approximately \$4 million is included in other regulatory liabilities, current and other current liabilities and approximately \$44 million is included in other regulatory assets, deferred and other deferred credits and liabilities. At December 31, 2017, the environmental remediation liability included



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

estimated costs of approximately \$52 million, of which approximately \$5 million is included in under recovered regulatory clause revenues and other current liabilities and approximately \$47 million is included in other regulatory assets, deferred and other deferred credits and liabilities.

These estimated costs primarily relate to site closure criteria by the Florida Department of Environmental Protection (FDEP) for potential impacts to soil and groundwater from herbicide applications at the Company's substations. The schedule for completion of the remediation projects is subject to FDEP approval. The projects have been approved by the Florida PSC for recovery through the Company's environmental cost recovery clause; therefore, these liabilities have no impact on net income.

The ultimate outcome of these matters cannot be determined at this time; however, as a result of the regulatory treatment for environmental remediation expenses described above, the final disposition of these matters is not expected to have a material impact on the Company's financial statements.

**FERC Matters**

***Open Access Transmission Tariff***

On May 10, 2018, Alabama Municipal Electric Authority and Cooperative Energy filed with the FERC a complaint against SCS and the traditional electric operating companies (including the Company) claiming that the current 11.25% base return on equity (ROE) used in calculating the annual transmission revenue requirements of the traditional electric operating companies' (including the Company's) open access transmission tariff is unjust and unreasonable as measured by the applicable FERC standards. The complaint requested that the base ROE be set no higher than 8.65% and that the FERC order refunds for the difference in revenue requirements that results from applying a just and reasonable ROE established in this proceeding upon determining the current ROE is unjust and unreasonable. On June 18, 2018, SCS and the traditional electric operating companies (including the Company) filed their response challenging the adequacy of the showing presented by the complainants and offering support for the current ROE. On September 6, 2018, the FERC issued an order establishing a refund effective date of May 10, 2018 in the event a refund is due and initiating an investigation and settlement procedures regarding the current base ROE. Through December 31, 2018, the estimated maximum potential refund is not expected to be material to the Company's results of operations or cash flows. The ultimate outcome of this matter cannot be determined at this time.

**Retail Regulatory Matters**

The Company's rates and charges for service to retail customers are subject to the regulatory oversight of the Florida PSC. The Company's rates are a combination of base rates and several separate cost recovery clauses for specific categories of costs. These separate cost recovery clauses address such items as fuel and purchased energy costs, purchased power capacity costs, energy conservation and demand side management programs, and the costs of compliance with environmental laws and regulations. Costs not addressed through one of the specific cost recovery clauses are recovered through the Company's base rates.

***Storm Damage Cost Recovery***

See Note 1 under "Property Damage Reserve" for information on how the Company maintains a reserve for property damage to cover the cost of damages from major storms to its transmission and distribution lines and the cost of uninsured damages to its generating facilities and other property.

On October 10, 2018, Hurricane Michael made landfall on the Gulf Coast of Florida causing substantial damage in the Company's service territory. The Company estimates the cost of repairing the damages to its transmission and distribution lines and uninsured facilities will total approximately \$425 million to \$450 million, which primarily will be charged to the Company's property damage reserve or capitalized. As a result, the accumulated reserve had a deficit balance of approximately \$255 million at December 31, 2018.

As authorized in the 2017 Rate Case Settlement Agreement, on February 6, 2019, the Company filed a petition with the Florida PSC requesting to recover approximately \$342 million from its retail customers through a storm surcharge, which would also replenish the property damage reserve to approximately \$40 million. The ultimate outcome of this matter cannot be determined at this time.

***Retail Base Rate Cases***

On April 4, 2017, the Florida PSC approved the 2017 Rate Case Settlement Agreement among the Company and three intervenors with respect to the Company's request in 2016 to increase retail base rates. Among the terms of the 2017 Rate Case Settlement Agreement, the Company increased rates effective with the first billing cycle in July 2017 to provide an annual overall net customer impact of approximately \$54.3 million. The net customer impact consisted of a \$62.0 million increase in annual base revenues, less an annual purchased power capacity cost recovery clause credit for certain wholesale revenues of approximately \$8



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

million through December 2019. In addition, the Company continued its authorized retail ROE midpoint (10.25%) and range (9.25% to 11.25%), is deemed to have a maximum equity ratio of 52.5% for all retail regulatory purposes, and implemented new dismantlement accruals effective July 1, 2017. The Company also began amortizing the regulatory asset associated with the investment balances remaining after the retirement of Plant Smith Units 1 and 2 (357 megawatts) over 15 years effective January 1, 2018 and implemented new depreciation rates effective January 1, 2018. The 2017 Rate Case Settlement Agreement also resulted in a \$32.5 million write-down of the Company's ownership of Plant Scherer Unit 3 (205 megawatts), which was recorded in the first quarter 2017.

As a continuation of the 2017 Rate Case Settlement Agreement, on March 26, 2018, the Florida PSC approved a stipulation and settlement agreement among the Company and three intervenors addressing the retail revenue requirement effects of the Tax Reform Legislation (Tax Reform Settlement Agreement). The Tax Reform Settlement Agreement resulted in an annual reduction to the Company's revenues of \$18.2 million from base rates and \$15.6 million from environmental cost recovery rates beginning April 1, 2018 and also provided for a one-time refund of \$69.4 million for the retail portion of unprotected (not subject to normalization) deferred tax liabilities through a reduced fuel cost recovery rate over the remainder of 2018. As a result of the Tax Reform Settlement Agreement, the Florida PSC also approved an increase in the Company's maximum equity ratio from 52.5% to 53.5% for all retail regulatory purposes.

On October 30, 2018, the Florida PSC approved a \$9.6 million annual reduction in base rate revenues effective January 2019 following a limited scope proceeding in connection with the Tax Reform Settlement Agreement to address protected deferred tax liabilities consistent with Internal Revenue Service (IRS) normalization principles. At December 31, 2018, the Company had deferred \$8 million of related 2018 tax benefits as a regulatory liability to be refunded to retail customers in 2019 through the Company's fuel cost recovery rate.

***Cost Recovery Clauses***

On November 5, 2018, the Florida PSC approved the Company's annual clause rate request for its fuel, purchased power capacity, environmental, and energy conservation cost recovery factors for 2019. The net effect of the approved changes is a \$38 million decrease in annual revenues effective in January 2019, the majority of which will be offset by related expense decreases.

Revenues for all cost recovery clauses, as recorded on the financial statements, are adjusted for differences in actual recoverable costs and amounts billed in current regulated rates. Accordingly, changes in the billing factor for fuel and purchased power will have no significant effect on the Company's revenues or net income, but will affect annual cash flow. The recovery provisions for environmental compliance and energy conservation include related expenses and a return on net average investment.

***Retail Fuel Cost Recovery***

The Company has established fuel cost recovery rates as approved by the Florida PSC. If, at any time during the year, the projected year-end fuel cost over or under recovery balance exceeds 10% of the projected fuel revenue applicable for the period, the Company is required to notify the Florida PSC and indicate if an adjustment to the fuel cost recovery factor is being requested.

At December 31, 2018, the over recovered fuel balance was approximately \$28 million, which is included in other regulatory liabilities, current on the balance sheet. At December 31, 2017, the under recovered fuel balance was approximately \$22 million, which is included in under recovered regulatory clause revenues on the balance sheet.

***Purchased Power Capacity Recovery***

The Company has established purchased power capacity cost recovery rates as approved by the Florida PSC. If the projected year-end purchased power capacity cost over or under recovery balance exceeds 10% of the projected purchased power capacity revenue applicable for the period, the Company is required to notify the Florida PSC and indicate if an adjustment to the purchased power capacity cost recovery factor is being requested.

At December 31, 2018, the over recovered purchased power capacity balance was \$2 million, which is included in other regulatory liabilities, current on the balance sheet. At December 31, 2017, the under recovered purchased power capacity balance was approximately \$2 million, which is included in under recovered regulatory clause revenues on the balance sheet.

***Environmental Cost Recovery***

The Florida Legislature adopted legislation for an environmental cost recovery clause, which allows an electric utility to petition the Florida PSC for recovery of prudent environmental compliance costs that are not being recovered through base rates or any other recovery mechanism. Such environmental costs include operations and maintenance expenses, emissions allowance expense, depreciation, and a return on net average investment. This legislation also allows recovery of costs incurred as a result of



## NOTES (continued)

### Gulf Power Company Financial Statements and Notes

an agreement between the Company and the FDEP for the purpose of ensuring compliance with ozone ambient air quality standards adopted by the EPA.

Annually, the Company seeks recovery of projected costs including any true-up amounts from prior periods. At December 31, 2018, the over recovered environmental balance of approximately \$15 million, along with the current portion of projected environmental expenditures, is included in other regulatory liabilities, current on the balance sheet.

At December 31, 2017, the over recovered environmental balance of approximately \$11 million, along with the current portion of projected environmental expenditures of approximately \$14 million, was included in under recovered regulatory clause revenues on the balance sheet.

#### *Energy Conservation Cost Recovery*

Every five years, the Florida PSC establishes new numeric conservation goals covering a 10-year period for utilities to reduce annual energy and seasonal peak demand using demand-side management programs. After the goals are established, utilities develop plans and programs to meet the approved goals. The costs for these programs are recovered through rates established annually in the energy conservation cost recovery (ECCR) clause.

At December 31, 2018, the over recovered ECCR balance was immaterial. At December 31, 2017, the under recovered ECCR balance was immaterial.

## 4. JOINT OWNERSHIP AGREEMENTS

The Company and Mississippi Power jointly own Plant Daniel Units 1 and 2, which together represent capacity of 1,000 megawatts. Plant Daniel is a generating plant located in Jackson County, Mississippi. In accordance with the operating agreement, Mississippi Power acts as the Company's agent with respect to the construction, operation, and maintenance of these units.

The Company and Georgia Power jointly own the 818-megawatt capacity Plant Scherer Unit 3. Plant Scherer is a generating plant located near Forsyth, Georgia. In accordance with the operating agreement, Georgia Power acts as the Company's agent with respect to the construction, operation, and maintenance of the unit.

At December 31, 2018, the Company's percentage ownership and investment in these jointly-owned facilities were as follows:

	Plant Scherer Unit 3 (coal)	Plant Daniel Units 1 & 2 (coal)
	<i>(in millions)</i>	
Plant in service	\$ 392	\$ 705
Accumulated depreciation	156	243
Construction work in progress	21	6
Company ownership	25%	50%

The Company's proportionate share of its plant operating expenses is included in the corresponding operating expenses in the statements of income and the Company is responsible for providing its own financing.

In conjunction with Southern Company's sale of the Company, Mississippi Power and the Company have committed to seek a restructuring of their 50% undivided ownership interests in Plant Daniel such that each of them would, after the restructuring, own 100% of a generating unit. On January 15, 2019, the Company provided notice to Mississippi Power that the Company will retire its share of the generating capacity of Plant Daniel on January 15, 2024. Mississippi Power has the option to purchase the Company's ownership interest for \$1 on January 15, 2024, provided that Mississippi Power exercises the option no later than 120 days prior to that date. The ultimate outcome of these matters remains subject to Mississippi Power's decision with respect to its purchase option and applicable regulatory approvals, including the FERC and the Mississippi PSC, and cannot now be determined. See Note 1 under "General" for information regarding the sale of the Company.

## 5. INCOME TAXES

On behalf of the Company, Southern Company files a consolidated federal income tax return and various combined and separate state income tax returns. Under a joint consolidated income tax allocation agreement, each Southern Company subsidiary's current and deferred tax expense is computed on a stand-alone basis and no subsidiary is allocated more current expense than would be paid if it filed a separate income tax return. In accordance with IRS regulations, each company is jointly and severally liable for the federal tax liability.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

**Federal Tax Reform Legislation**

Following the enactment of the Tax Reform Legislation, the SEC staff issued Staff Accounting Bulletin 118 – "Income Tax Accounting Implications of the Tax Cuts and Jobs Act" (SAB 118), which provided for a measurement period of up to one year from the enactment date to complete accounting under GAAP for the tax effects of the legislation. Due to the complex and comprehensive nature of the enacted tax law changes and their application under GAAP, the Company considered all amounts recorded in the financial statements as a result of the Tax Reform Legislation "provisional" as discussed in SAB 118 and subject to revision prior to filing its 2017 tax return in the fourth quarter 2018. As of December 31, 2018, the Company considered the measurement of impacts from the Tax Reform Legislation on deferred income tax assets and liabilities, primarily due to the impact of the reduction of the corporate income tax rate, to be complete.

However, the IRS continues to issue regulations that provide further interpretation and guidance on the law and each state's adoption of the provisions contained in the Tax Reform Legislation remains uncertain. The regulatory treatment of certain impacts of the Tax Reform Legislation is subject to the discretion of the FERC. The ultimate impact of this matter cannot be determined at this time. See Note 3 for additional information.

**Current and Deferred Income Taxes**

Details of income tax provisions are as follows:

	2018	2017
	<i>(in millions)</i>	
Federal -		
Current	\$ (26)	\$ 19
Deferred	(2)	58
	(28)	77
State -		
Current	(1)	(1)
Deferred	9	14
	8	13
Total	\$ (20)	\$ 90

**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

The tax effects of temporary differences between the carrying amounts of assets and liabilities in the financial statements and their respective tax bases, which give rise to deferred tax assets and liabilities, are as follows:

	2018	2017
	<i>(in millions)</i>	
Deferred tax liabilities-		
Accelerated depreciation	\$ 557	\$ 552
Property basis differences	119	105
Employee benefit obligations	37	38
Regulatory assets associated with employee benefit obligations	42	44
Regulatory assets associated with asset retirement obligations	45	38
Property damage reserve	65	—
Other	26	35
Total deferred income tax liabilities	891	812
Deferred tax assets-		
Federal effect of state deferred taxes	41	25
Employee benefit obligations	61	66
Other property differences	81	98
Asset retirement obligations	45	38
Deferred state tax assets	12	—
Other	29	48
Total deferred income tax assets	269	275
Net deferred income tax liabilities	\$ 622	\$ 537

The implementation of the Tax Reform Legislation significantly reduced accumulated deferred income taxes in 2017, partially offset by bonus depreciation provisions in the Protecting Americans from Tax Hikes Act. The Tax Reform Legislation also significantly reduced tax-related regulatory assets and increased tax-related regulatory liabilities.

The Company has tax-related regulatory assets (deferred income tax charges) and regulatory liabilities (deferred income tax credits). The regulatory assets are primarily attributable to tax benefits flowed through to customers in prior years, deferred taxes previously recognized at rates lower than the current enacted tax law, and taxes applicable to capitalized interest. The regulatory liabilities are primarily attributed to deferred taxes previously recognized at rates higher than the current enacted tax law. See Note 1 for the Company's related balances at December 31, 2018 and 2017.

At December 31, 2018, the Company had state of Florida net operating loss (NOL) carryforwards totaling approximately \$224 million, resulting in a net deferred tax asset of approximately \$10 million. The NOLs will begin expiring in 2036. The ultimate outcome of this matter cannot be determined at this time.

**Effective Tax Rate**

A reconciliation of the federal statutory income tax rate to the effective income tax rate is as follows:

	2018	2017
Federal statutory rate	21.0%	35.0%
State income tax, net of federal deduction	4.4	3.7
Non-deductible book depreciation	0.5	0.2
Flowback of excess deferred income taxes	(39.4)	—
Other	(0.6)	0.5
Effective income tax (benefit) rate	(14.1)%	39.4%

The Company's effective tax rate for 2018 varied significantly as compared to 2017 due to the 14% lower 2018 federal tax rate resulting from the Tax Reform Legislation and the flowback of excess deferred income taxes.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

**Unrecognized Tax Benefits**

The Company has no material unrecognized tax benefits for the periods presented. The Company classifies interest on tax uncertainties as interest expense. Accrued interest for unrecognized tax benefits was immaterial and the Company did not accrue any penalties on uncertain tax positions.

It is reasonably possible that the amount of the unrecognized tax benefits could change within 12 months. New audit findings or settlements associated with ongoing audits could result in significant unrecognized tax benefits. At this time, a range of reasonably possible outcomes cannot be determined.

The IRS has finalized its audits of Southern Company's consolidated federal income tax returns through 2017. Southern Company is a participant in the Compliance Assurance Process of the IRS. The audits for the Company's state income tax returns have either been concluded, or the statute of limitations has expired, for years prior to 2015.

**6. FINANCING**

**Securities Due Within One Year**

At December 31, 2018 and 2017, the Company had no long-term debt due within one year.

Maturities through 2023 applicable to total long-term debt include \$175 million in 2020, \$141 million in 2022, and \$33 million in 2023. There are no scheduled maturities in 2019 or 2021.

**Senior Notes**

At December 31, 2018 and 2017, the Company had a total of \$990 million of senior notes outstanding. These senior notes are effectively subordinate to all secured debt of the Company, which totaled approximately \$41 million at both December 31, 2018 and 2017.

**Pollution Control Revenue Bonds**

Pollution control revenue bond obligations represent loans to the Company from public authorities of funds derived from sales by such authorities of revenue bonds issued to finance pollution control and solid waste disposal facilities. The Company is required to make payments sufficient for the authorities to meet principal and interest requirements of such bonds. The amount of tax-exempt pollution control revenue bond obligations outstanding at December 31, 2018 and 2017 was \$309 million.

**Outstanding Classes of Capital Stock**

The Company has preferred stock, Class A preferred stock, preference stock, and common stock authorized. The Company's preferred stock and Class A preferred stock, without preference between classes, would rank senior to the Company's preference stock and common stock with respect to payment of dividends and voluntary or involuntary dissolution. No shares of preferred stock or Class A preferred stock were outstanding at December 31, 2018. The Company's preference stock would rank senior to the common stock with respect to the payment of dividends and voluntary or involuntary dissolution. No shares of preference stock were outstanding at December 31, 2018.

**Dividend Restrictions**

The Company can only pay dividends out of retained earnings or paid-in-capital.

**Assets Subject to Lien**

The Company has granted a lien on its property at Plant Daniel in connection with the issuance of two series of pollution control revenue bonds with an aggregate outstanding principal amount of \$41 million as of December 31, 2018. There are no agreements or other arrangements among the Southern Company system companies under which the assets of one company have been pledged or otherwise made available to satisfy obligations of Southern Company or any of its subsidiaries.

NOTES (continued)  
Gulf Power Company Financial Statements and Notes

**Bank Credit Arrangements**

At December 31, 2018, committed credit arrangements with banks were as follows:

Expires					Executable Term Loans		Expires Within One Year	
2019	2020	2021	Total	Unused	One Year	Two Years	Term Out	No Term Out
(in millions)			(in millions)		(in millions)		(in millions)	
\$ 45	\$ 235	\$ —	\$ 280	\$ 280	\$ 45	\$ —	\$ 45	\$ —

In November 2018, the Company amended \$20 million of its multi-year credit arrangements to extend the maturity dates from 2018 to 2019.

Most of the bank credit arrangements require payment of commitment fees based on the unused portion of the commitments. Commitment fees average less than  $\frac{1}{4}$  of 1% for the Company.

Subject to applicable market conditions, the Company expects to renew or replace its bank credit arrangements as needed, prior to expiration. In connection therewith, the Company may extend the maturity dates and/or increase or decrease the lending commitments thereunder.

Most of these bank credit arrangements contain covenants that limit the Company's debt level to 65% of total capitalization, as defined in the arrangements. For purposes of these definitions, debt excludes certain hybrid securities. At December 31, 2018, the Company was in compliance with these covenants.

Most of the \$280 million of unused credit arrangements with banks provide liquidity support to the Company's pollution control revenue bonds and commercial paper program. The amount of variable rate pollution control revenue bonds outstanding requiring liquidity support as of December 31, 2018 was approximately \$82 million. In addition, at December 31, 2018, the Company had \$58 million of fixed rate pollution control revenue bonds outstanding that were required to be remarketed within the next 12 months.

For short-term cash needs, the Company borrows primarily through a commercial paper program that has the liquidity support of the Company's committed bank credit arrangements described above. The Company may also borrow through various other arrangements with banks. Commercial paper and short-term bank loans are included in notes payable on the balance sheets. The Company had no short-term borrowings outstanding at December 31, 2018. At December 31, 2017 the Company had \$45 million of commercial paper outstanding at a weighted average interest rate of 2.0%.

## 7. COMMITMENTS

### Fuel and Purchased Power Agreements

To supply a portion of the fuel requirements of its generating plants, the Company has entered into various long-term commitments for the procurement and delivery of fossil fuel not recognized on the balance sheets. In 2018 and 2017, the Company incurred fuel expense of \$421 million and \$427 million, respectively, the majority of which was purchased under long-term commitments. The Company expects that a substantial amount of its future fuel needs will continue to be purchased under long-term commitments.

In addition, the Company has entered into various long-term commitments for the purchase of capacity, energy, and transmission, some of which are accounted for as operating leases. The energy-related costs associated with PPAs are recovered through the fuel cost recovery clause. The capacity and transmission-related costs associated with PPAs are recovered through the purchased power capacity cost recovery clause. Capacity expense under a PPA accounted for as an operating lease was \$74 million for 2018 and \$75 million for 2017.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

Estimated total obligations under non-affiliate PPAs accounted for as operating leases at December 31, 2018 were as follows:

	(in millions)
2019	\$ 79
2020	79
2021	79
2022	79
2023 and thereafter	33
<b>Total</b>	<b>\$ 349</b>

SCS may enter into various types of wholesale energy and natural gas contracts acting as an agent for the Company and all of the other traditional electric operating companies and Southern Power. Under these agreements, each of the traditional electric operating companies and Southern Power may be jointly and severally liable. Accordingly, Southern Company has entered into keep-well agreements with the Company and each of the other traditional electric operating companies to ensure the Company will not subsidize or be responsible for any costs, losses, liabilities, or damages resulting from the inclusion of Southern Power as a contracting party under these agreements.

**Operating Leases**

In addition to the operating lease PPAs discussed above, the Company has entered into operating leases with Southern Linc and other third parties for the use of cellular tower space. These agreements have initial terms ranging from five to 10 years and renewal options of up to five years. The Company also has other operating lease agreements with various terms and expiration dates. Total lease payments were \$10 million for each of 2018 and 2017. The Company excludes contingent rent but includes any step rents, fixed escalations, lease concessions, and lease extension to cover the expected life of the facility in the computation of minimum lease payments.

At December 31, 2018, estimated minimum lease payments under operating leases were as follows:

	Minimum Lease Payments		
	Affiliate Operating Leases <sup>(a)</sup>	Non-Affiliate Operating Leases <sup>(b)</sup>	Total
	(in millions)		
2019	\$ 2	\$ 2	\$ 4
2020	2	1	3
2021	2	—	2
2022	2	—	2
2023	—	—	—
2024 and thereafter	4	—	4
<b>Total</b>	<b>\$ 12</b>	<b>\$ 3</b>	<b>\$ 15</b>

(a) Includes operating leases for cellular tower space.

(b) Includes operating leases for barges, facilities, and other equipment.

The Company also has operating lease agreements for railcars, barges, and towboats for the transport of coal. The Company has the option to renew the leases at the end of the lease term. The Company's lease costs, charged to fuel inventory and recovered through the retail fuel cost recovery clause, were \$6 million in 2018 and \$7 million in 2017. The Company's annual barge and towboat payments for 2019 are expected to be approximately \$1 million.

**8. STOCK-BASED COMPENSATION**

Stock-based compensation primarily in the form of Southern Company performance share units (PSU) and restricted stock units (RSU) may be granted through the Omnibus Incentive Compensation Plan to the Company's management employees. At December 31, 2018, there were 131 current and former employees participating in stock-based compensation programs.

Employees immediately vest in PSUs and RSUs upon retirement. As a result, compensation expense for employees that are retirement eligible at the grant date is recognized immediately, while compensation expense for employees that become retirement eligible during the vesting period is recognized over the period from grant date to the date of retirement eligibility. The

**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

compensation cost related to the grant of Southern Company stock-based compensation to the Company's employees is recognized in the Company's financial statements with a corresponding credit to equity, representing a capital contribution from Southern Company. In addition, the Company recognizes forfeitures as they occur. The financial statement impact of the Company's stock-based compensation awards was immaterial for all periods presented. As of December 31, 2018, the unrecognized compensation cost of stock-based compensation awards was immaterial.

All unvested stock-based awards vest immediately upon a change in control where Southern Company is not the surviving corporation or in the event of a subsidiary change in control. In accordance with the change in control provisions of the Omnibus Incentive Compensation Plan, at the effective time of the sale of the Company on January 1, 2019, all active Company employees' unvested 2017 and 2018 granted stock-based awards vested at 100% of the target number of share units granted. In the first quarter 2019, all vested performance share and restricted stock units were paid in cash. Unexercised stock options of active Company employees at the time of sale will be exercisable through their original 10-year exercise period.

**9. FAIR VALUE MEASUREMENTS**

Fair value measurements are based on inputs of observable and unobservable market data that a market participant would use in pricing the asset or liability. The use of observable inputs is maximized where available and the use of unobservable inputs is minimized for fair value measurement and reflects a three-tier fair value hierarchy that prioritizes inputs to valuation techniques used for fair value measurement.

- Level 1 consists of observable market data in an active market for identical assets or liabilities.
- Level 2 consists of observable market data, other than that included in Level 1, that is either directly or indirectly observable.
- Level 3 consists of unobservable market data. The input may reflect the assumptions of the Company of what a market participant would use in pricing an asset or liability. If there is little available market data, then the Company's own assumptions are the best available information.

In the case of multiple inputs being used in a fair value measurement, the lowest level input that is significant to the fair value measurement represents the level in the fair value hierarchy in which the fair value measurement is reported.

At December 31, 2018 and 2017, assets and liabilities measured at fair value on a recurring basis during the period, together with their associated level of the fair value hierarchy, were as follows:

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
<b>At December 31, 2018:</b>				
	<i>(in millions)</i>			
<b>Liabilities:</b>				
Energy-related derivatives	\$ —	\$ 6	\$ —	\$ 6

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
<b>At December 31, 2017:</b>				
	<i>(in millions)</i>			
<b>Assets:</b>				
Cash equivalents	21	—	—	21
<b>Liabilities:</b>				
Energy-related derivatives	\$ —	\$ 21	\$ —	\$ 21

**Valuation Methodologies**

The energy-related derivatives primarily consist of exchange-traded and over-the-counter financial products for natural gas and physical power products, including, from time to time, basis swaps. These are standard products used within the energy industry



NOTES (continued)  
Gulf Power Company Financial Statements and Notes

and are valued using the market approach. The inputs used are mainly from observable market sources, such as forward natural gas prices, power prices, implied volatility, and overnight index swap interest rates. Interest rate derivatives are also standard over-the-counter products that are valued using observable market data and assumptions commonly used by market participants. The fair value of interest rate derivatives reflects the net present value of expected payments and receipts under the swap agreement based on the market's expectation of future interest rates. Additional inputs to the net present value calculation may include the contract terms, counterparty credit risk, and occasionally, implied volatility of interest rate options. The interest rate derivatives are categorized as Level 2 under Fair Value Measurements as these inputs are based on observable data and valuations of similar instruments. See Note 10 for additional information on how these derivatives are used.

As of December 31, 2018 and 2017, other financial instruments for which the carrying amount did not equal fair value were as follows:

	Carrying Amount	Fair Value
	(in millions)	
Long-term debt:		
2018	\$ 1,286	\$ 1,309
2017	\$ 1,285	\$ 1,334

The fair values are determined using Level 2 measurements and are based on quoted market prices for the same or similar issues or on the current rates available to the Company.

## 10. DERIVATIVES

The Company is exposed to market risks, primarily commodity price risk and interest rate risk. To manage the volatility attributable to these exposures, the Company nets its exposures, where possible, to take advantage of natural offsets and may enter into various derivative transactions for the remaining exposures pursuant to the Company's policies in areas such as counterparty exposure and risk management practices. The Company's policy is that derivatives are to be used primarily for hedging purposes and mandates strict adherence to all applicable risk management policies. Derivative positions are monitored using techniques including, but not limited to, market valuation, value at risk, stress testing, and sensitivity analysis. Derivative instruments are recognized at fair value in the balance sheets as either assets or liabilities and are presented on a net basis. See Note 9 for additional information. In the statements of cash flows, any cash impacts of settled energy-related and interest rate derivatives are recorded as operating activities.

The Company adopted ASU 2017-12 as of January 1, 2018. See Note 1 under "Recently Adopted Accounting Standards – Other" for additional information.

### Energy-Related Derivatives

The Company enters into energy-related derivatives to hedge exposures to electricity, natural gas, and other fuel price changes. However, due to cost-based rate regulations and other various cost recovery mechanisms, the Company has limited exposure to market volatility in energy-related commodity prices. The Company manages fuel-hedging programs, implemented per the guidelines of the Florida PSC, through the use of financial derivative contracts, which are expected to continue to mitigate price volatility. With respect to wholesale generating capacity, the Company has limited exposure to market volatility in energy-related commodity prices because long-term sales contracts shift substantially all fuel cost responsibility to the purchaser. However, the Company may be exposed to market volatility in energy-related commodity prices to the extent any uncontracted capacity is used to sell electricity. The Florida PSC approved a stipulation and agreement that prospectively imposed a moratorium on the Company's fuel-hedging program in October 2016 through December 31, 2017. In connection with the 2017 Rate Case Settlement Agreement, the Florida PSC extended the moratorium on the Company's fuel-hedging program until January 1, 2021. The moratorium does not have an impact on the recovery of existing hedges entered into under the previously-approved hedging program.

Energy-related derivative contracts are accounted for under one of three methods:

- *Regulatory Hedges* — Energy-related derivative contracts which are designated as regulatory hedges relate primarily to the Company's fuel-hedging programs, where gains and losses are initially recorded as regulatory liabilities and assets, respectively, and then are included in fuel expense as the underlying fuel is used in operations and ultimately recovered through the fuel cost recovery clause.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

- *Cash Flow Hedges* — Gains and losses on energy-related derivatives designated as cash flow hedges (which are mainly used to hedge anticipated purchases and sales) are initially deferred in AOCI before being recognized in the statements of income in the same period and in the same income statement line item as the earnings effect of the hedged transactions.
- *Not Designated* — Gains and losses on energy-related derivative contracts that are not designated or fail to qualify as hedges are recognized in the statements of income as incurred.

Some energy-related derivative contracts require physical delivery as opposed to financial settlement, and this type of derivative is both common and prevalent within the electric industry. When an energy-related derivative contract is settled physically, any cumulative unrealized gain or loss is reversed and the contract price is recognized in the respective line item representing the actual price of the underlying goods being delivered.

At December 31, 2018, the net volume of energy-related derivative contracts for natural gas positions totaled 6 million mmBtu (million British thermal units) for the Company, with the longest hedge date of 2020 over which it is hedging its exposure to the variability in future cash flows for forecasted transactions.

In addition to the volume discussed above, the Company enters into physical natural gas supply contracts that provide the option to sell back excess gas due to operational constraints. The maximum expected volume of natural gas subject to such a feature is 2 million mmBtu for the Company.

**Interest Rate Derivatives**

The Company may also enter into interest rate derivatives to hedge exposure to changes in interest rates. The derivatives employed as hedging instruments are structured to minimize ineffectiveness. Derivatives related to existing variable rate securities or forecasted transactions are accounted for as cash flow hedges where the derivatives' fair value gains or losses are recorded in OCI and are reclassified into earnings at the same time and presented in the same income statement line item as the earnings effect of the hedged transactions.

At December 31, 2018, there were no interest rate derivatives outstanding.

The estimated pre-tax gains related to interest rate derivatives that will be reclassified from accumulated OCI to interest expense for the 12-month period ending December 31, 2019 are immaterial. Deferred gains and losses related to interest rate derivatives are expected to be amortized into earnings through 2027.

**Derivative Financial Statement Presentation and Amounts**

The Company enters into derivative contracts that may contain certain provisions that permit intra-contract netting of derivative receivables and payables for routine billing and offsets related to events of default and settlements. The fair value amounts of derivative assets and liabilities in the balance sheets are presented net to the extent that there are netting arrangements or similar agreements with the counterparties.

At December 31, 2018 and 2017, all energy-related derivatives were designated as hedging instruments for regulatory purposes. The related fair values totaled \$6 million and \$21 million, respectively, at December 31, 2018 and 2017 and were reflected in the balance sheets as other current liabilities and other deferred credits and liabilities as follows:

	Other Current Liabilities	Other Deferred Credits and Liabilities	Total
	<i>(in millions)</i>		
December 31, 2018	\$ 6	— \$	6
December 31, 2017	\$ 14	\$ 7	21

Energy-related derivatives not designated as hedging instruments were immaterial at December 31, 2018 and 2017.



**NOTES (continued)**  
**Gulf Power Company Financial Statements and Notes**

At December 31, 2018 and 2017, the pre-tax effects of unrealized derivative losses arising from energy-related derivative instruments designated as regulatory hedging instruments and deferred were as follows:

Balance Sheet Location	Unrealized Losses	
	2018	2017
	<i>(in millions)</i>	
Other regulatory assets, current	\$ (6)	\$ (14)
Other regulatory assets, deferred	—	(7)
<b>Total energy-related derivative losses</b>	<b>\$ (6)</b>	<b>\$ (21)</b>

For the years ended December 31, 2018 and 2017, the pre-tax effects of energy-related derivatives and interest rate derivatives designated as cash flow hedging instruments and energy-related derivatives not designated as hedging instruments on the statements of income were immaterial. Also, there was no material ineffectiveness recorded in earnings for any period presented.

Upon the adoption of ASU 2017-12, beginning in 2018, ineffectiveness was no longer separately measured and recorded in earnings. See Note 1 for additional information.

**Contingent Features**

The Company does not have any credit arrangements that would require material changes in payment schedules or terminations as a result of a credit rating downgrade. There are certain derivatives that could require collateral, but not accelerated payment, in the event of various credit rating changes of certain affiliated companies. At December 31, 2018, the Company had no collateral posted with derivative counterparties to satisfy these arrangements.

At December 31, 2018, the fair value of derivative liabilities with contingent features was immaterial. However, because of joint and several liability features underlying these derivatives, the maximum potential collateral requirements arising from the credit-risk related contingent features, at a rating below BBB- and/or Baa3, were \$3 million, and include certain agreements that could require collateral in the event that one or more Southern Company power pool participants has a credit rating change to below investment grade. Following the sale of the Company to NextEra Energy, the Company is continuing to participate in the Southern Company power pool for a defined transition period that, subject to certain potential adjustments, is scheduled to end on January 1, 2024.

Generally, collateral may be provided by a Southern Company guaranty, letter of credit, or cash. If collateral is required, fair value amounts recognized for the right to reclaim cash collateral or the obligation to return cash collateral are not offset against fair value amounts recognized for derivatives executed with the same counterparty.

The Company is exposed to losses related to financial instruments in the event of counterparties' nonperformance. The Company only enters into agreements and material transactions with counterparties that have investment grade credit ratings by Moody's Investors Service, Inc. and S&P Global Ratings, a division of S&P Global Inc., or with counterparties who have posted collateral to cover potential credit exposure. The Company has also established risk management policies and controls to determine and monitor the creditworthiness of counterparties in order to mitigate the Company's exposure to counterparty credit risk.

The Company does not anticipate a material adverse effect on the financial statements as a result of counterparty nonperformance.

**11. REVENUE FROM CONTRACTS WITH CUSTOMERS**

The Company generates revenues from a variety of sources, some of which are excluded from the scope of ASC 606, such as leases, derivatives, and certain cost recovery mechanisms. See Note 1 under "Recently Adopted Accounting Standards – Revenue" for additional information on the adoption of ASC 606 for revenue from contracts with customers and under "Revenues" and "Other Taxes" for additional information on the revenue policies of the Company.

NOTES (continued)  
Gulf Power Company Financial Statements and Notes

The following table disaggregates revenue sources for the year ended December 31, 2018:

	2018
<b>Operating revenues</b>	
Retail revenues <sup>(a)</sup>	
Residential	\$ 698
Commercial	379
Industrial	131
Other	5
<b>Total retail electric revenues</b>	<b>\$ 1,213</b>
Wholesale energy revenues <sup>(b)</sup>	160
Wholesale capacity revenues	26
Other revenues <sup>(c)</sup>	66
<b>Total operating revenues</b>	<b>\$ 1,465</b>

(a) Retail revenues include a net reduction of \$60 million related to certain cost recovery mechanisms that are not accounted for as revenue under ASC 606. See Note 3 for additional information on cost recovery mechanisms.

(b) Wholesale revenues include \$4 million accounted for as derivatives primarily related to physical energy sales in the wholesale electricity market. See Note 10 for additional information on energy-related derivative contracts.

(c) Other revenues includes \$6 million of revenues not accounted for under ASC 606.

**Remaining Performance Obligations**

The Company has long-term contracts with customers in which revenues are recognized as performance obligations are satisfied over the contract term primarily related to PPAs whereby the Company provides electricity and generation capacity to a customer. The revenue recognized for the delivery of electricity is variable; however, certain PPAs include a fixed payment for fixed generation capacity over the term of the contract. At December 31, 2018, revenues from contracts with customers related to these remaining performance obligations totaling \$22 million are expected to be recognized in 2019.



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

**Gulf Power Company**  
**Quarterly Financial Statements**  
**September 30, 2019 and 2018**  
**(Unaudited)**



## DEFINITIONS

<u>Term</u>	<u>Meaning</u>
ASU	Accounting Standards Update
CCR	Coal combustion residuals
CO <sub>2</sub>	Carbon dioxide
FASB	Financial Accounting Standards Board
FDEP	Florida Department of Environmental Protection
FERC	Federal Energy Regulatory Commission
FPL	Florida Power & Light Company
FPSC	Florida Public Service Commission
Gulf Power	Gulf Power Company
IRS	Internal Revenue Service
mmBtu	Million British thermal units
NextEra Energy	NextEra Energy Inc.
power pool	The operating arrangement whereby the integrated generating resources of the traditional electric operating companies and Southern Power (excluding subsidiaries) are subject to joint commitment and dispatch in order to serve their combined load obligations
SCS	Southern Company Services, Inc. (the Southern Company system service company)
SEC	U.S. Securities and Exchange Commission
Southern Company	The Southern Company
Southern Company system	Southern Company, the traditional electric operating companies, Southern Power Company and its subsidiaries, Southern Company Gas and its subsidiaries, SEGCO, Southern Nuclear Operating Company, Inc., SCS, Southern Communications Services, Inc.,
traditional electric operating companies	Alabama Power Company, Georgia Power Company, Gulf Power and Mississippi Power Company

**GULF POWER COMPANY**  
**STATEMENTS OF INCOME**  
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
	(millions)			
Operating Revenues	\$ 440	\$ 414	\$ 1,134	\$ 1,106
Operating Expenses:				
Fuel, purchased power and interchange	160	176	420	440
Other operations and maintenance	61	73	191	248
Depreciation and amortization	73	57	180	142
Taxes other than income taxes and other - net	38	33	110	91
Total operating expenses	332	339	901	921
Operating Income	108	75	233	185
Other Income (Expense):				
Interest expense, net of amounts capitalized	(13)	(13)	(40)	(39)
Other income (expense) - net	2	(3)	3	—
Total other income (expense) - net	(11)	(16)	(37)	(39)
Income Before Income Taxes	97	59	196	146
Income taxes	21	(4)	38	(1)
Net Income	\$ 76	\$ 63	\$ 158	\$ 147

The accompanying notes are an integral part of these financial statements.



**GULF POWER COMPANY**  
**BALANCE SHEETS**  
(unaudited)

	September 30, 2019	December 31, 2018
	(millions)	
<b>PROPERTY, PLANT and EQUIPMENT</b>		
Electric plant in service and other property	\$ 5,586	\$ 5,391
Construction work in progress	383	199
Accumulated depreciation and amortization	(1,609)	(1,543)
Total property, plant and equipment - net	4,360	4,047
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	5	9
Customer receivables, net of allowances of \$1 and \$1, respectively	192	133
Materials, supplies and fossil fuel inventory	131	128
Regulatory assets	118	79
Other	23	19
Total current assets	469	368
<b>OTHER ASSETS</b>		
Regulatory assets	431	732
Other assets	199	41
Total other assets	630	773
<b>TOTAL ASSETS</b>	<u>\$ 5,459</u>	<u>\$ 5,188</u>
<b>CAPITALIZATION</b>		
Common stock (authorized shares - 10,000,000, \$0.01 par value and 20,000,000, no par value, respectively; outstanding shares - 7,392,717)	\$ 678	\$ 678
Additional paid-in capital	1,014	978
Retained earnings	73	265
Accumulated other comprehensive loss	(1)	(1)
Long-term debt	1,411	1,286
Total capitalization	3,175	3,206
<b>CURRENT LIABILITIES</b>		
Commercial Paper	155	—
Current portion of long-term debt	175	—
Accounts payable	143	222
Customer deposits	34	34
Accrued interest and taxes	81	26
Regulatory liabilities	39	50
Other	143	95
Total current liabilities	770	427
<b>OTHER LIABILITIES AND DEFERRED CREDITS</b>		
Asset retirement obligations	99	123
Deferred income taxes	625	622
Regulatory liabilities	534	589
Other	256	221
Total other liabilities and deferred credits	1,514	1,555
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>TOTAL CAPITALIZATION AND LIABILITIES</b>	<u>\$ 5,459</u>	<u>\$ 5,188</u>

The accompanying notes are an integral part of these financial statements.

**GULF POWER COMPANY**  
**STATEMENTS OF CASH FLOWS**  
(unaudited)

	Nine months ended September 30,	
	2019	2018
	(millions)	
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 158	\$ 147
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	180	142
Other amortization	2	6
Deferred income taxes	3	(45)
Cost recovery clauses and franchise fees	(11)	64
Other - net	(20)	(13)
Changes in operating assets and liabilities:		
Current assets	(67)	(20)
Noncurrent assets	60	(2)
Current liabilities	(39)	38
Noncurrent liabilities	(4)	1
Net cash provided by operating activities	262	318
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(471)	(238)
Net cash used in investing activities	(471)	(238)
CASH FLOWS FROM FINANCING ACTIVITIES		
Issuances of long-term debt	405	—
Retirements of long-term debt	(105)	—
Capital contributions from parent company	100	40
Net change in commercial paper	155	5
Dividends on common stock	(350)	(115)
Other - net	—	(1)
Net cash provided by financing activities	205	(71)
Net increase in cash, cash equivalents and restricted cash	(4)	9
Cash, cash equivalents, and restricted cash at beginning of period	9	28
Cash, cash equivalents, and restricted cash at end of period	\$ 5	\$ 37
Supplemental Cash Flow Information:		
Noncash transactions:		
Accrued property additions	\$ 49	\$ 31

The accompanying notes are an integral part of these financial statements.



**GULF POWER COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**  
(unaudited)

The accompanying financial statements should be read in conjunction with the 2018 Annual Financial Statements of Gulf Power. In the opinion of Gulf Power management, all adjustments (consisting of normal recurring accruals) considered necessary for fair financial statement presentation have been made. Certain amounts included in the prior year's financial statements have been reclassified to conform to the current year's presentation. The results of operations for an interim period generally will not give a true indication of results for the year.

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Leases**

Gulf Power adopted the new lease accounting standard effective January 1, 2019 on a prospective basis. Gulf Power elected (i) not to reassess whether any expired or existing contracts are/or contain leases, (ii) not to reassess the lease classification for any expired or existing leases, (iii) not to reassess initial direct costs for any existing leases, (iv) not to reevaluate land easements if they were not previously accounted for as leases, (v) not to apply hindsight when assessing lease term and impairment of the right-of-use (ROU) asset, (vi) not to apply the recognition requirements for short-term leases, (vii) not to separate non-lease components from associated lease components for substantially all classes of underlying assets and (viii) to apply transition requirements at adoption date and not apply the new requirements to comparative periods, including disclosures.

Upon adoption of the new lease standard, ROU assets and lease liabilities in connection with operating leases at Gulf Power were recorded. ROU assets are included in noncurrent other assets, lease liabilities are included in current and noncurrent other liabilities on Gulf Power's balance sheet. The ROU assets were netted against the deferred capacity expense of \$82 million that were included within other current and other non-current liabilities on the balance sheet at January 1, 2019. Operating lease expense is included in other operations and maintenance expenses and amortization expense is included in depreciation and amortization expense on Gulf Power's statement of income.

Operating right-of-use assets and lease liabilities were recorded primarily related to a purchased power agreement; such amounts totaled approximately \$220 million at September 30, 2019. Gulf Power's lease liabilities at September 30, 2019 were calculated using a weighted-average incremental borrowing rate at the lease inception of 3.39% and a weighted average remaining lease term of 3.6 years. Gulf Power's operating lease expense for the three and nine months ended September 30, 2019 was \$14 million and \$42 million respectively. Rental expense for operating leases, as included within operations as reported under the previous lease standard, for the year ended December 31, 2018 was \$85 million and included within other operations and maintenance expense.

For the nine months ended September 30, 2019, cash paid for amounts included in the measurement of lease liabilities was \$42 million and included within operating cash flows on the statement of cash flow.

Operating leases primarily have fixed payments with expiration dates ranging from 2019 to 2023. At September 30, 2019, expected lease payments over the remaining terms of the operating leases for each of the following calendar years (in millions):

2019	\$	16
2020		64
2021		64
2022		64
2023		26
Total lease payments		234
Less: imputed interest		(14)
Total lease obligation	\$	220

**GULF POWER COMPANY**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

The following table presents estimated minimum lease payments under operating leases as reported under the previous lease standard for each of the following calendar years as of December 31, 2018 (in millions):

2019	\$ 83
2020	82
2021	81
2022	81
2023	33
2024 and thereafter	4
Total lease payments	<u>\$ 364</u>

**Affiliate Transactions**

During the first quarter of 2019, certain services were provided to Gulf Power by FPL at direct or allocated fully loaded cost. Corporate support services provided by FPL primarily include corporate governance, accounting, financial, consulting, human resources systems and programs, education and training, legal, payroll, management and administrative, computer services, software maintenance and license fees. Other services provided by FPL include business operations, engineering and construction, development, customer service and information technology. Charges for these services are billed to Gulf Power in accordance with FPL's policy and amounted to \$57 million for the nine months ended September 30, 2019.

In 2018, Gulf Power had an agreement with SCS under which the following services were rendered to Gulf Power at direct or allocated cost: general and design engineering, operations, purchasing, accounting, finance and treasury, tax, information technology, marketing, auditing, insurance and pension administration, human resources, systems and procedures, digital wireless communications, and other services with respect to business and operations, construction management, and power pool transactions. Costs for these services amounted to \$59 million, for the nine months ended September 30, 2018. Cost allocation methodologies used by SCS prior to the repeal of the Public Utility Holding Company Act of 1935, as amended, were approved by the SEC. Subsequently, additional cost allocation methodologies have been reported to the FERC and management believes they are reasonable. The FERC permits services to be rendered at cost by system service companies.

**2. RETIREMENT BENEFITS**

On January 1, 2019, Gulf Power's retiree benefit plan regulatory assets of approximately \$160 million and non-current liabilities of approximately \$80 million were reduced to zero as the pension plan was absorbed into NextEra Energy's pension plan. Gulf Power employees now participate in NextEra Energy's qualified noncontributory defined benefit pension plan. Certain Gulf Power employees also participate in NextEra Energy's supplemental executive retirement plan (SERP), which includes a non-qualified supplemental defined benefit pension component that provides benefits to a select group of management and highly compensated employees, and sponsors a contributory postretirement plan for other benefits for retirees of NextEra Energy and its subsidiaries meeting certain eligibility requirements.

**3. REGULATORY MATTERS**

***Storm Damage Cost Recovery***

On May 14, 2019, the FPSC approved an interim surcharge from Gulf Power customers to recover costs of restoring power and rebuilding the grid following Hurricane Michael, as well as to replenish the property damage reserve to approximately \$41 million. On November 15, 2019, Gulf Power filed a petition with the FPSC establishing final Hurricane Michael cost recovery amounts. The ultimate outcome of this matter cannot be determined at this time.



**GULF POWER COMPANY**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

**4. INCOME TAXES**

In 2019, NextEra Energy will file a consolidated federal income tax return and various combined and separate state tax returns. Under the tax sharing agreement between NextEra Energy and certain of its subsidiaries, Gulf Power's income tax provision reflects the use of the "separate return method," except that tax benefits that could not be used on a separate return basis, but are used on the consolidated tax return, are recorded by the subsidiary that generated the tax benefits. Any remaining consolidated income tax benefits or expenses are recorded at the corporate level. Included in other regulatory assets and other regulatory liabilities on Gulf Power's balance sheet is the revenue equivalent of the difference in deferred income taxes computed under accounting rules as compared to regulatory accounting rules.

In 2018, on behalf of Gulf Power, Southern Company filed a consolidated federal income tax return and various combined and separate state income tax returns. Under a joint consolidated income tax allocation agreement, each Southern Company subsidiary's current and deferred tax expense is computed on a stand-alone basis and no subsidiary is allocated more current expense than would be paid if it filed a separate income tax return. In accordance with IRS regulations, each company is jointly and severally liable for the federal tax liability.

**Effective Tax Rate**

A reconciliation of the federal statutory income tax rate to the effective income tax rate is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Statutory federal income tax rate	21.0%	21.0 %	21.0%	21.0 %
State income tax, net of federal deduction	4.9	4.6	4.8	4.6
Amortization of deferred regulatory credit	(4.5)	(31.8)	(6.8)	(26.1)
Other, net	0.2	0.3	0.4	—
Effective income tax rate	21.6%	(5.9)%	19.4%	(0.5)%

**5. FINANCING**

In April 2019, two issuances of pollution control bonds with principle balances of \$37 million and \$29 million were remarketed from fixed rates of 2.1% and 4.45%, respectively, to variable rates based on an underlying index plus a specified margin. There was no change to the outstanding principal of the pollution control bonds. Additionally, in April 2019 there were \$30 million of new issuances related to the revolving credit facility with a maturity date of 2020. The interest rate is variable based on an underlying index plus a specified margin. In September 2019, Gulf Power issued a \$300 million term loan with a maturity date of 2021 at a variable rate based on an underlying index plus a specified margin. Additionally, in September 2019 one issuance of pollution control bonds with a principal balance of \$21 million was remarketed from a fixed rate of 1.4% to a variable daily rate based on an underlying index plus a specified margin. On October 17, 2019, Gulf Power issued \$45 million of variable rate tax-exempt industrial development revenue bonds with a maturity date of 2049. The interest rate is variable based on an underlying index plus a specified margin.

**6. STOCK COMPENSATION**

Stock-based compensation primarily in the form of NextEra Energy performance share awards, restricted stock, and stock options may be granted through the NextEra Energy, Inc. Amended and Restated 2011 Long Term Incentive Plan. As of September 30, 2019, there were five current employees participating in the performance share, restricted stock and stock option programs.

Performance share awards are typically payable at the end of a three-year performance period if the specified performance criteria are met. The fair value for the majority of performance share awards is estimated based upon the closing market price of NextEra Energy's common stock as of the date of grant less the present value of expected dividends, multiplied by an estimated performance multiple which is subsequently trued up based on actual performance.

Restricted stock typically vests within three years after the date of grant and is subject to, among other things, restrictions on transferability prior to vesting. The fair value of restricted stock is measured based upon the closing market price of NextEra Energy's common stock as of the date of grant.

Options typically vest within three years after the date of grant and have a maximum term of ten years. The exercise price of each option granted equals the closing market price of NextEra Energy's common stock on the date of grant. The fair value of the options is estimated on the date of the grant using the Black-Scholes option-pricing model.

**GULF POWER COMPANY**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

**7. FAIR VALUE MEASUREMENTS**

Fair value measurements are based on inputs of observable and unobservable market data that a market participant would use in pricing the asset or liability. The use of observable inputs is maximized where available and the use of unobservable inputs is minimized for fair value measurement and reflects a three-tier fair value hierarchy that prioritizes inputs to valuation techniques used for fair value measurement.

- Level 1 consists of observable market data in an active market for identical assets or liabilities.
- Level 2 consists of observable market data, other than that included in Level 1, that is either directly or indirectly observable.
- Level 3 consists of unobservable market data. The input may reflect the assumptions of Gulf Power of what a market participant would use in pricing an asset or liability. If there is little available market data, then Gulf Power's own assumptions are the best available information.

In the case of multiple inputs being used in a fair value measurement, the lowest level input that is significant to the fair value measurement represents the level in the fair value hierarchy in which the fair value measurement is reported.

Liabilities measured at fair value on a recurring basis, together with their associated level of the fair value hierarchy, were as follows:

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
	(millions)			
As of September 30, 2019:				
Liabilities: Energy-related derivatives	\$ —	\$ 3	\$ —	\$ 3
As of December 31, 2018				
Liabilities: Energy-related derivatives	\$ —	\$ 6	\$ —	\$ 6

**Valuation Methodologies**

The energy-related derivatives primarily consist of over-the-counter financial products for natural gas and physical power products, including, from time to time, basis swaps. These are standard products used within the energy industry and are valued using the market approach. The inputs used are mainly from observable market sources, such as forward natural gas prices, power prices, implied volatility, and overnight index swap interest rates. Interest rate derivatives are also standard over-the-counter products that are valued using observable market data and assumptions commonly used by market participants. See Note 8 for additional information on how these derivatives are used.

As of September 30, 2019 and December 31, 2018, other financial instruments for which the carrying amount did not equal fair value were as follows:

	Carrying Amount	Fair Value
	(millions)	
Long-term debt, including current portion		
September 30, 2019	\$ 1,586	\$ 1,702
December 31, 2018	\$ 1,286	\$ 1,309

The fair values are determined using Level 2 measurements and are based on quoted market prices for the same or similar issues or on the current rates available to Gulf Power.

**8. DERIVATIVES**

Gulf Power is exposed to commodity price risk. To manage the volatility attributable to this exposures, Gulf Power nets its exposures, where possible, to take advantage of natural offsets and may enter into various derivative transactions for the remaining exposures pursuant to Gulf Power's policies in areas such as counterparty exposure and risk management practices. Gulf Power's policy is that derivatives are to be used primarily for hedging purposes and mandates strict adherence to all applicable risk management



**GULF POWER COMPANY**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

policies. Derivative positions are monitored using techniques including, but not limited to, market valuation, value at risk, stress testing, and sensitivity analysis. Derivative instruments are recognized at fair value in the balance sheets as either assets or liabilities and are presented on a net basis. See Note 7 for additional information. In the statements of cash flows, the cash impacts of settled energy-related derivatives are recorded as operating activities.

**Energy-Related Derivatives**

Gulf Power enters into energy-related derivatives to hedge exposures to electricity, gas, and other fuel price changes. However, due to cost-based rate regulations and other various cost recovery mechanisms, Gulf Power has limited exposure to market volatility in energy-related commodity prices. Gulf Power manages fuel-hedging programs, implemented per the guidelines of the FPSC, through the use of financial derivative contracts, which is expected to continue to mitigate price volatility. The FPSC approved a stipulation and agreement that prospectively imposed a moratorium on Gulf Power's fuel-hedging program in October 2016 through December 31, 2017. In connection with the 2017 Rate Case Settlement Agreement, the FPSC extended the moratorium on Gulf Power's fuel-hedging program until January 1, 2021. The moratorium does not have an impact on the recovery of existing hedges entered into under the previously-approved hedging program.

Energy-related derivative contracts which are designated as regulatory hedges relate primarily to Gulf Power's fuel-hedging programs, where gains and losses are initially recorded as regulatory liabilities and assets, respectively, and then are included in fuel expense as the underlying fuel is used in operations and ultimately recovered through the fuel cost recovery clause.

Some energy-related derivative contracts require physical delivery as opposed to financial settlement, and this type of derivative is both common and prevalent within the electric industry. When an energy-related derivative contract is settled physically, any cumulative unrealized gain or loss is reversed and the contract price is recognized in the respective line item representing the actual price of the underlying goods being delivered.

At September 30, 2019, the net volume of energy-related derivative contracts for natural gas positions totaled 2.1 million mmBtu for Gulf Power, with the longest hedge date of 2020.

**Derivative Financial Statement Presentation and Amounts**

Gulf Power enters into energy-related and interest rate derivative contracts that may contain certain provisions that permit intra-contract netting of derivative receivables and payables for routine billing and offsets related to events of default and settlements. Fair value amounts of derivative assets and liabilities on the balance sheets are presented net to the extent that there are netting arrangements or similar agreements with the counterparties.

At September 30, 2019 and December 31, 2018, the fair value of energy-related derivatives was reflected on the balance sheets as follows:

	Other Current Liabilities	Other Deferred Credits and Liabilities	Total
	(millions)		
September 30, 2019	\$ 3	\$ —	\$ 3
December 31, 2018	\$ 6	\$ —	\$ 6

Energy-related derivatives not designated as hedging instruments were immaterial on the balance sheets at September 30, 2019 and December 31, 2018.

At September 30, 2019 and December 31, 2018, the pre-tax effects of unrealized derivative gains (losses) arising from energy-related derivatives designated as regulatory hedging instruments and deferred were as follows:

Balance Sheet Location*	Unrealized Losses	
	September 30, 2019	December 31, 2018
	(millions)	
Other regulatory assets, current	\$ 3	\$ 6
Other regulatory assets, deferred	—	—
	\$ 3	\$ 6

(\*) The unrealized gains and losses for derivative contracts subject to netting arrangements were presented net on the balance sheets.



## **GULF POWER COMPANY**

### **NOTES TO FINANCIAL STATEMENTS (Continued)**

For the periods ended September 30, 2019 and December 31, 2018, the pre-tax effects of energy-related derivatives and energy-related derivatives not designated as hedging instruments on the income statement were immaterial.

#### **Contingent Features**

Gulf Power does not have any credit arrangements that would require material changes in payment schedules or terminations as a result of a credit rating downgrade. There are certain derivatives that could require collateral, but not accelerated payment, in the event of various credit rating changes of certain affiliated companies. At September 30, 2019 and December 31, 2018, Gulf Power had no collateral posted with derivative counterparties to satisfy these arrangements.

At September 30, 2019, the fair value of derivative instruments with credit-risk-related contingent features that were in a liability position was approximately \$3 million. At December 31, 2018, the fair value of derivative liabilities with contingent features was immaterial. However, because of joint and several liability features underlying these derivatives, the maximum potential collateral requirements arising from the credit risk related contingent features, at a rating below investment grade, were approximately \$2 million as of September 30, 2019 and December 31, 2018, and include certain agreements that could require collateral in the event that one or more Southern Company power pool participants has a credit rating change to below investment grade. Following the sale of Gulf Power to NextEra Energy, Gulf Power is continuing to participate in the Southern Company power pool for a defined transition period that, subject to certain potential adjustments, is scheduled to end on January 1, 2024. Some derivative contracts do not contain credit ratings downgrade triggers, but do contain provisions that require certain financial measures be maintained and/or have credit-related cross-default triggers. In the event these provisions were triggered, Gulf Power could be required to post additional collateral of up to approximately \$1 million at September 30, 2019.

Generally, collateral may be provided by a NextEra Energy guaranty, letter of credit, or cash. If collateral is required, fair value amounts recognized for the right to reclaim cash collateral or the obligation to return cash collateral are not offset against fair value amounts recognized for derivatives executed with the same counterparty.

Gulf Power is exposed to losses related to financial instruments in the event of counterparties' nonperformance. Gulf Power only enters into agreements and material transactions with counterparties that have investment grade credit ratings by Moody's Investors Service, Inc. and S&P Global Ratings, a division of S&P Global Inc., or with counterparties who have posted collateral to cover potential credit exposure. Gulf Power has also established risk management policies and controls to determine and monitor the creditworthiness of counterparties in order to mitigate Gulf Power's exposure to counterparty credit risk.

Gulf Power does not anticipate a material adverse effect on the financial statements as a result of counterparty nonperformance.

## **9. COMMITMENTS AND CONTINGENCIES**

#### **General Litigation Matters**

Gulf Power is subject to certain claims and legal actions arising in the ordinary course of business. In addition, Gulf Power's business activities are subject to extensive governmental regulation related to public health and the environment, such as regulation of air emissions and water discharges. Litigation over environmental issues and claims of various types, including property damage, personal injury, common law nuisance, and citizen enforcement of environmental requirements such as standards for air, water, land, and protection of natural resources has occurred throughout the U.S. This litigation has included claims for damages alleged to have been caused by CO<sub>2</sub> and other emissions, CCR, and alleged exposure to hazardous materials, and/or requests for injunctive relief in connection with such matters. The ultimate outcome of such pending or potential litigation against Gulf Power cannot be predicted at this time; however, for current proceedings not specifically reported herein, management does not anticipate that the ultimate liabilities, if any, arising from such current proceedings would have a material effect on Gulf Power's financial statements.

#### **Environmental Remediation**

Gulf Power must comply with environmental laws and regulations governing the handling and disposal of waste and releases of hazardous substances. Under these various laws and regulations, Gulf Power may also incur substantial costs to clean up affected sites. Gulf Power received authority from the FPSC to recover approved environmental compliance costs through the environmental cost recovery clause. The FPSC reviews costs and adjusts rates up or down annually.

Gulf Power recognizes a liability for environmental remediation costs only when it determines a loss is probable and reasonably estimable. At September 30, 2019, Gulf Power's environmental remediation liability included estimated costs of environmental remediation projects of approximately \$46 million, of which approximately \$3 million is included in current regulatory liabilities and other current liabilities and approximately \$43 million is included in regulatory liabilities, deferred and other liabilities and deferred credits. At December 31, 2018, the environmental remediation liability included estimated costs for environmental remediation projects of approximately \$48 million, of which approximately \$4 million is included in current regulatory liabilities and other current liabilities and approximately \$44 million is included in other regulatory liabilities, deferred and other liabilities and deferred credits.



**GULF POWER COMPANY**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

These estimated costs primarily relate to site closure criteria by the FDEP for potential impacts to soil and groundwater from herbicide applications at Gulf Power's substations. The schedule for completion of the remediation projects is subject to FDEP approval. The projects have been approved by the FPSC for recovery through Gulf Power's environmental cost recovery clause; therefore, these liabilities have no impact on net income.

In the third quarter, Gulf Power also recognized a \$15 million liability to complete FDEP ordered rehabilitation remediation at a closed ash landfill, of which approximately \$3 million is in current regulatory liabilities and other current liabilities and \$12 million is included in regulatory liabilities, deferred and other liabilities and deferred credits. The remediation at the closed ash landfill is scheduled to be complete in 2021. This project has been approved by the FPSC for recovery through Gulf Power's environmental cost recovery clause.

The ultimate outcome of these matters cannot be determined at this time; however, as a result of the regulatory treatment for environmental remediation expenses described above, the final disposition of these matters is not expected to have a material impact on Gulf Power's financial statements.

**APPENDIX B**  
**SUMMARY OF TERMS**



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

Glossar	
y:	
BD	= Business Day
IPD	= Interest Payment Date
RA	= Remarketing Agent
TA	= Tender Agent

	Daily Interest Rate Period	Weekly Interest Rate Period	Commercial Paper Interest Rate Period	Long-Term Interest Rate Period
<b>Authorized Denomination</b>	\$100,000 and any integral multiple of \$5,000 in excess of \$100,000	\$100,000 and any integral multiple of \$5,000 in excess of \$100,000	\$100,000 and any integral multiple of \$1,000 in excess of \$100,000	Integral multiples of \$5,000
<b>Interest Rate Setting</b>	Par rate determined by RA	Par rate determined by RA	Par rate and Commercial Paper Terms determined by RA	Par rate determined by RA
<b>Purchase from Owner at Owner's Option</b>	On any BD with irrevocable notice to TA by 11:00 a.m.	On any BD with at least 7 days irrevocable notice to TA	Not applicable	Not applicable
<b>Interest Rate Effective</b>	Daily (Sat., Sun. and holidays will be same as preceding BD)	Wednesday through Tuesday	Commercial Paper Date through last day of Commercial Paper Term (not greater than 270 days)	First day of Period through last day of Period (one year or more)
<b>Interest Rate Announced</b>	Daily	No later than BD prior to the Wednesday	No later than the Commercial Paper Date	No later than first day of Period
<b>Interest Accrual Date</b>	First day thereof and first BD of each month thereafter	First day thereof and first Wednesday of each month thereafter	Commercial Paper Date through last day of Commercial Paper Term	IPD through day preceding next IPD
<b>Calculation of Accrued Interest</b>	365/366-day year and actual days elapsed	365/366-day year and actual days elapsed	365/366-day year and actual days elapsed	360-day year; twelve 30-day months



	Daily Interest Rate Period	Weekly Interest Rate Period	Commercial Paper Interest Rate Period	Long-Term Interest Rate Period
<b>Interest Payment Date</b>	Fifth BD of the month	First Wednesday of the month	Day after end of Commercial Paper Term (next Commercial Paper Date or first day of next Period)	fifth day of the calendar month that is six months after the calendar month in which the adjustment date occurs and the fifth day of the calendar month every six months after each such payment date thereafter until the end of Period
<b>Interest Payment</b>	By check to registered owner as of Record Date on IPD; in immediately available funds by deposit to account or wire transfers to owners who request same	By check to registered owner as of Record Date on IPD; in immediately available funds by deposit to account or wire transfers to owners who request same	By check to registered owner as of Record Date on IPD; in immediately available funds by deposit to account or wire transfers to owners who request same, but only when Bond is presented	By check to registered owner as of Record Date on IPD
<b>Mandatory Tender for Purchase</b>	Effective date of any change in the Period	Effective date of any change in the Period	First day of Period and the Commercial Paper Date	Effective date of any change in the Period
<b>Optional Redemption</b>	100% of par plus accrued interest on any BD	100% of par plus accrued interest on any BD	100% of par plus accrued interest on day immediately succeeding last day of the Commercial Paper Term	If the period is less than or equal to 10 years, then non-callable. If the period is longer than 10 years, callable at par after 10 years; 100% of par plus accrued interest on any BD upon the occurrence of certain events
<b>Mandatory Redemption</b>	100% of par plus accrued interest upon final determination of taxability	100% of par plus accrued interest upon final determination of taxability	100% of par plus accrued interest upon final determination of taxability	100% of par plus accrued interest upon final determination of taxability
<b>Principal and any Premium Paid</b>	Upon presentation and surrender of Series 2019 Bonds	Upon presentation and surrender of Series 2019 Bonds	Upon presentation and surrender of Series 2019 Bonds	Upon presentation and surrender of Series 2019 Bonds

	Daily Interest Rate Period	Weekly Interest Rate Period	Commercial Paper Interest Rate Period	Long-Term Interest Rate Period
Eligible Adjustment Date out of Period	Any BD	Any BD	BD following a Commercial Paper Term	BD following Period; any BD on which Series 2019 Bonds permitted to be redeemed
Adjustment to Period	By the Company	By the Company	By the Company	By the Company
Notice to Owners of Adjustment to Period	At least 15 days	At least 15 days	At least 15 days	At least 15 days (30 days if effective date is not day after originally scheduled last day of Long-Term Interest Rate Period)
Favorable Opinion of Counsel Required on Adjustment to Period	Yes	Yes	Yes	Yes



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

## **APPENDIX C**

Form of Approving Opinion of Bond Counsel



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

[Closing Date]

Holders of the Bonds referred to below

**Re: \$55,000,000 Revenue Bonds (Gulf Power Company Project), Series 2019 issued by  
Mississippi Business Finance Corporation**

We have acted as bond counsel to Gulf Power Company (the "Company") in connection with the issuance by the Mississippi Business Finance Corporation (the "Issuer") of \$55,000,000 Revenue Bonds (Gulf Power Company Project), Series 2019 (the "Bonds"). In such capacity, we have examined such law and such certified proceedings and other documents as we have deemed necessary to render this opinion.

The Bonds are issued pursuant to the Sections 57-10-201 *et seq.*, Mississippi Code of 1972, as amended and supplemented (the "Act"), a Trust Indenture (the "Indenture") between the Issuer and U.S. Bank National Association, as Trustee (the "Trustee"), and resolutions (the "Resolutions") of the Issuer authorizing the issuance and sale of the Bonds. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Indenture.

The Issuer and the Company have entered into a loan agreement (the "Loan Agreement") pursuant to which the Issuer is lending the proceeds of the Bonds to the Company. Under the Loan Agreement, the Company has covenanted to make payments to the Issuer to be used to pay when due the principal of, premium (if any) and interest on the Bonds. Under the Indenture, the Issuer has pledged and assigned its rights in and to the Loan Agreement (except certain rights to indemnification, reimbursements, and administrative fees) as security for the Bonds. The Bonds are payable solely from payments from the Company under the Loan Agreement.

We have reviewed a certified copy of the transcript of the validation proceeding concluded in the Chancery Court of the First Judicial District of Hinds County, Mississippi, with respect to the Bonds and certain other obligations.

Regarding questions of fact material to our opinion, we have relied on representations of the Issuer and the Company contained in the Indenture and the Loan Agreement, and the certified proceedings and other certifications of public officials and others furnished to us, including certifications furnished to us by or on behalf of the Company, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion that, under existing law:

1. The Issuer is a duly created and validly existing public corporation of the State of Mississippi with the power to enter into and perform its obligations under the Indenture and the Loan Agreement and to issue the Bonds.
2. The Indenture has been duly authorized, executed, and delivered by the Issuer, and is a valid and binding obligation of the Issuer enforceable against the Issuer. The Indenture creates a valid lien on the Trust Estate pledged by the Indenture as security for the Bonds, and the rights of the Issuer



under the Loan Agreement (except certain rights to indemnification, reimbursements, and administrative fees).

3. The Bonds have been duly authorized and executed by the Issuer, and are valid and binding limited obligations of the Issuer, payable solely from the Trust Estate.

4. No authorization, approval, consent or other order of any governmental authority or agency is required for the valid authorization, execution, issuance and sale of the Bonds by the Issuer and the valid authorization, execution and delivery of the Indenture and the Loan Agreement by the Issuer, except for the authorizations, consents or approvals as have been obtained or may be required under state securities or Blue Sky laws.

5. Interest on the Bonds is excludable from gross income for federal income tax purposes, except for interest on any Bond for any period during which such Bond is held by a "substantial user" of the facilities financed by the Bonds, or a "related person" within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended (the "Code"); however, interest on the Bonds is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. The opinion set forth in this paragraph is subject to the condition that the Issuer and the Company comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The Issuer and the Company have covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Bonds.

6. Interest on the Bonds is exempt from State of Mississippi income taxation.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture are limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

We express no opinion herein regarding the accuracy, adequacy, or completeness of the Official Statement relating to the Bonds. Further, we express no opinion regarding federal or state tax consequences arising with respect to the Bonds other than as set forth in paragraphs 5 and 6 herein.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

Faithfully yours,

**MAYNARD, COOPER & GALE, P.C.**

## APPENDIX D

### NOTICE OF TENDER OF BOOK-ENTRY BONDS-WEEKLY INTEREST RATE PERIOD

\$ \_\_\_\_\_  
Mississippi Business Finance Corporation  
Revenue Bonds  
(Gulf Power Company Project),  
Series 2019

The Undersigned DTC Participant representing the beneficial owner of the book-entry bonds described below (the "Tendered Book-Entry Bonds") does hereby irrevocably tender the Tendered Book-Entry Bonds to U.S. Bank National Association, or its successor, as Tender Agent (the "Tender Agent"), for purchase by the Tender Agent seven days from the date of the Tender Agent's receipt, by telecopy or otherwise, of this notice, or the next Business Day\* if such seventh day is not a Business Day (the "Tender Date"); provided, however, that if this notice is received by the Tender Agent by telecopy, this notice shall be of no force or effect, and the Tendered Book-Entry Bonds shall not be accepted or purchased by the Tender Agent, unless the Tender Agent receives this notice in original executed form by hand delivery prior to 2:00 p.m. New York time on the Business Day next succeeding its receipt of such notice by telecopy. The Purchase Price of Tendered Book-Entry Bonds shall be the unpaid principal amount of the Tendered Book-Entry Bonds plus accrued and unpaid interest, if any, thereon to, but not including, the Tender Date, and without premium (the "Purchase Price"). In the event that the Tender Date is also an interest payment date for the Tendered Book-Entry Bonds, interest on the Tendered Book-Entry Bonds to, but not including, the Tender Date shall be paid in the ordinary fashion and shall not constitute part of the Purchase Price.

#### Tendered Book-Entry Bonds

Tendered Principal Amount (in multiples of \$100,000 and \$5,000 in excess thereof	<u>DTC Participant Number</u>	<u>CUSIP Number(s)</u>
\$		

The undersigned acknowledges and agrees by the execution and delivery of this notice that (1) the tender of the Tendered Book-Entry Bonds is irrevocable; (2) the undersigned is contractually bound to tender such Tendered Book-Entry Bonds to the Tender Agent on the Tender Date; and (3) in the event of a failure to tender the Tendered Book-Entry Bonds to the

---

\* "Business Day" shall have the meaning ascribed thereto by the Indenture under which the Tendered Book-Entry Bonds are issued.



Tender Agent on or before 12:00 Noon, New York City time on the Tender Date the undersigned shall pay to the Tender Agent an amount (the "default amount") equal to the difference between (a) the costs arising out of the failure to tender and (b) the purchase price, as defined above, which would have been paid to the undersigned upon a tender. As used herein the "costs arising out of the failure to tender" shall mean the sum of (x) the amount expended by the Tender Agent, either directly or through an agent, in acquiring book-entry bonds in substitution of the Tendered Book-Entry Bonds (including interest thereon) and (y) the administrative and other charges, expenses or commissions incurred in connection with the acquisition of such substitute book-entry bonds.

The undersigned agrees that the Tender Agent, either directly or through an agent, may acquire such substitute bonds in such manner and market them as it deems commercially reasonable, and further agrees that the default amount is reasonable in light of the anticipated harm caused by the failure to tender and the inconvenience of obtaining any other remedy.

The undersigned hereby irrevocably appoints the Tender Agent as his duly authorized attorney and directs the Tender Agent to effect the transfer of the Tendered Book-Entry Bonds.

Date of Notice:

Signature of DTC Participant Representing the  
Beneficial Owner of the Tendered Book-Entry  
Bonds

---

---

---

Street City

---

State Zip

---

Area Code Telephone Number

Federal Taxpayer Identification Number

---



**NOTICE OF TENDER OF BOOK-ENTRY BONDS-DAILY INTEREST RATE PERIOD**

\$ \_\_\_\_\_  
**Mississippi Business Finance Corporation**  
**Revenue Bonds**  
**(Gulf Power Company Project),**  
**Series 2019**

The Undersigned DTC Participant representing the beneficial owner of the book-entry bonds described below (the "Tendered Book-Entry Bonds") does hereby irrevocably tender the Tendered Book-Entry Bonds to U.S. Bank National Association, or its successor, as Tender Agent (the "Tender Agent"), for purchase by the Tender Agent on the date hereof or the next Business Day\* if the date hereof is not a Business Day (the "Tender Date"); provided, however, that if this notice is not received by the Tender Agent by 11:00 a.m. on the date hereof, this notice shall be of no force or effect, and the Tendered Book-Entry Bonds shall not be accepted or purchased by the Tender Agent. The Purchase Price of Tendered Book-Entry Bonds shall be the unpaid principal amount of the Tendered Book-Entry Bonds plus accrued and unpaid interest, if any, thereon to, but not including, the Tender Date, and without premium (the "Purchase Price"). In the event that the Tender Date is also an interest payment date for the Tendered Book-Entry Bonds, interest on the Tendered Book-Entry Bonds to, but not including, the Tender Date shall be paid in the ordinary fashion and shall not constitute part of the Purchase Price.

Tendered Book-Entry Bonds

Tendered Principal  
Amount (in multiples  
of \$100,000 and  
\$5,000 in excess thereof)

DTC Participant Number

CUSIP Number(s)

\$

The undersigned acknowledges and agrees by the execution and delivery of this notice that (1) the tender of the Tendered Book-Entry Bonds is irrevocable; (2) the undersigned is contractually bound to tender such Tendered Book-Entry Bonds to the Tender Agent on the Tender Date; and (3) in the event of a failure to tender the Tendered Book-Entry Bonds to the Tender Agent on or before 12:00 Noon, New York City time on the Tender Date the undersigned shall pay to the Tender Agent an amount (the "default amount") equal to the difference between (a) the costs arising out of the failure to tender and (b) the purchase price, as defined above, which would have been paid to the undersigned upon a tender. As used herein the "costs arising out of the failure to tender" shall mean the sum of (x) the amount expended by the Tender Agent,

---

\* "Business Day" shall have the meaning ascribed thereto by the Indenture under which the Tendered Book-Entry Bonds are issued.

either directly or through an agent, in acquiring book-entry bonds in substitution of the Tendered Book-Entry Bonds (including interest thereon) and (y) the administrative and other charges, expenses or commissions incurred in connection with the acquisition of such substitute book-entry bonds.

The undersigned agrees that the Tender Agent, either directly or through an agent, may acquire such substitute bonds in such manner and market them as it deems commercially reasonable, and further agrees that the default amount is reasonable in light of the anticipated harm caused by the failure to tender and the inconvenience of obtaining any other remedy.

The undersigned hereby irrevocably appoints the Tender Agent as his duly authorized attorney and directs the Tender Agent to effect the transfer of the Tendered Book-Entry Bonds.

Date of Notice:

Signature of DTC Participant Representing the  
Beneficial Owner of the Tendered Book-Entry  
Bonds

---

---

\_\_\_\_\_  
Street City

\_\_\_\_\_  
State Zip

\_\_\_\_\_  
Area Code Telephone Number

Federal Taxpayer Identification Number

\_\_\_\_\_



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

## **APPENDIX E**

### **Form of 15c2-12 Undertaking**



THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

## GULF POWER COMPANY

### CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “Disclosure Undertaking”) is dated December \_\_, 2019 by GULF POWER COMPANY (the “Company”), in connection with the sale of \$55,000,000 aggregate principal amount of Mississippi Business Finance Corporation Revenue Bonds (Gulf Power Company Project), Series 2019 (the “Bonds”). The Bonds are issued pursuant to a Trust Indenture dated as of December 1, 2019 (the “Indenture”), between the Mississippi Business Finance Corporation (the “Issuer”) and U.S. Bank National Association, as trustee (the “Trustee”). The proceeds of the Bonds are provided by the Issuer to the Company pursuant to a Loan Agreement dated as of December 1, 2019 (the “Loan Agreement”) between Company and the Issuer.

Section 1. Purpose of the Disclosure Undertaking. This Disclosure Undertaking is being executed and delivered by the Company for the benefit of the Beneficial Owners (defined below) and in order to assist the Participating Underwriter in complying with the Rule (defined below). The Company acknowledges that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Undertaking, and the Issuer has no liability to any person, including any Beneficial Owner, with respect to any such reports, notices or disclosures.

Section 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Undertaking unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean the information described in Section 3(a) hereof or a Form 10-K (as defined in Section 3(b) hereof).

“Beneficial Owner” shall mean, while the Bonds are held in a book-entry only system, the actual purchaser of each Bond, the ownership interest of which is to be recorded on the records of the direct and indirect participants of DTC, and otherwise shall mean the holder of Bonds.

“Commission” shall mean the Securities and Exchange Commission, or any successor body thereto.

“EMMA” shall mean the Electronic Municipal Market Access system and the EMMA Continuing Disclosure Service of MSRB, or any successor thereto approved by the United States Securities and Exchange Commission, as a repository for municipal continuing disclosure information pursuant to the Rule.

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of (a) or (b); provided that “financial obligation” shall



not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Listed Events” shall mean any of the events listed in Section 4(a) of this Disclosure Undertaking.

“MSRB” means the Municipal Securities Rulemaking Board, or any successor thereto.

“Participating Underwriter” shall mean the original underwriter of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Commission under the Securities Exchange Act of 1934 (the “Exchange Act”), as the same may be amended from time to time.

### Section 3. Provision of Financial Information.

(a) With respect to the Company’s fiscal years ending December 31, 2019 and thereafter, if a Form 10-K (as defined below) is not filed with the Commission, the Company shall provide to the MSRB audited financial statements prepared in accordance with generally accepted accounting principles (GAAP) of the type set forth in the Official Statement dated December 3, 2019, delivered with respect to the reoffering of the Bonds, not later than one hundred twenty (120) days after the end of the Company’s fiscal year.

(b) If the Company shall file with the Commission, with respect to the Company’s fiscal years ending December 31, 2019 and thereafter, reports on Form 10-K under Sections 13 or 15(d) of the Exchange Act, including any successor provisions thereto (the “Form 10-K”), then the Company shall provide to the MSRB (i) a copy of such Form 10-K or (ii) notice on an annual basis that the Form 10-K constitutes the annual financial information with respect to the Company required under the Rule, not later than one hundred twenty (120) days after the end of the Company’s fiscal year.

(c) The Company shall, in a timely manner, provide to the MSRB notice of failure by the Company to file any Annual Report by the date due.

### Section 4. Reporting of Events.

(a) The Company shall provide, in a timely manner not in excess of ten business days after the occurrence of the event, to the MSRB notice of the occurrence of any of the following events with respect to the Bonds:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) any unscheduled draws on debt service reserves reflecting financial difficulties;

- (4) unscheduled draws on credit enhancement facilities reflecting financial difficulties;
- (5) substitution of credit or liquidity providers or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) modifications to rights of the holders of the Bonds, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Company;
- (13) the consummation of a merger, consolidation, or acquisition involving the Company or the sale of all or substantially all of the assets of the Company, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) Incurrence of (a) a Financial Obligation of the Company, if material, or (b) an agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Company, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Company, any of which reflect financial difficulties.

(b) Neither the terms of the Loan Agreement, the Indenture nor the Bonds require that any debt service reserve fund be established.



Section 5. Termination of Reporting Obligation. The Company's obligations under this Disclosure Undertaking shall terminate upon the defeasance, prior redemption or payment in full of all of the Bonds. If the Company's obligations under the Loan Agreement and this Disclosure Undertaking are assumed in full by some other entity, such entity shall be responsible for compliance with this Disclosure Undertaking in the same manner as if it were the Company and the Company shall have no further responsibility hereunder. The Company shall provide timely notice to the MSRB of the termination of the Company's obligations under this Disclosure Undertaking pursuant to an assumption of its obligations hereunder.

Section 6. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Undertaking, the Company may amend this Disclosure Undertaking with the written consent of the Trustee (and the Trustee shall agree to any amendment so requested by the Company that does not change the duties of the Trustee hereunder, provided it receives indemnity satisfactory to it) or waive any provision hereof, but only in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the obligor with respect to the Bonds or the type of business conducted by said obligor, provided that (1) the undertaking, as amended or following such waiver, would have complied with the requirements of the Rule on the date of an adjustment of the Interest Rate Period, after taking into account any amendments to the Rule as well as any change in circumstances, and (2) the amendment or waiver does not materially impair the interests of the holders of Bonds, in the opinion of the Trustee or counsel expert in federal securities laws reasonably satisfactory to both the Company and the Trustee, or is approved by not less than the Beneficial Owners of a majority in aggregate principal amount of the outstanding Bonds.

In the event of any amendment to the type of financial or operating data provided in an Annual Report provided pursuant to Section 3(b) hereof, or any change in accounting principles reflected in such Annual Report, the Company agrees that the Annual Report will explain, in narrative form, the reasons for the amendment or change and the effect of such change, including comparative information, where appropriate. To the extent not otherwise included in such Annual Report, the Company will also provide timely notice of any change in accounting principles to the MSRB.

Section 7. Additional Information. Nothing in this Disclosure Undertaking shall be deemed to prevent the Company from disseminating any other information, using the means of dissemination set forth in this Disclosure Undertaking or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Undertaking. If the Company chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Undertaking, the Company shall have no obligation under this Disclosure Undertaking to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 8. Default. In the event of a failure of the Company to comply with any provision of this Disclosure Undertaking, the Trustee may (and, at the request of the Beneficial Owners of not less than fifty-one percent (51%) of the aggregate principal amount of outstanding Bonds, shall) subject to the same conditions, limitations and procedures that would apply under the Indenture if the breach were an event of default under the Indenture (each, an "Event of Default"),

or any Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Company to comply with its obligations under this Disclosure Undertaking; provided, that, to the extent permitted by the securities laws, any Beneficial Owner's right to challenge the adequacy of the information provided in accordance with the undertaking of the Company described in Section 3 and Section 4 hereof shall be subject to the same limitations as those set forth in Article X of the Indenture with respect to Events of Default thereunder. A default under this Disclosure Undertaking shall not be deemed an Event of Default under the Indenture or the Loan Agreement, and the sole remedy under this Disclosure Undertaking in the event of any failure of the Company to comply with this Disclosure Undertaking shall be an action to compel performance. The Trustee shall be entitled to rely conclusively upon any written evidence provided by the Company regarding the provision of information to the MSRB.

The Company agrees to pay the Trustee from time to time reasonable compensation for services provided by the Trustee in connection with this Disclosure Undertaking and to pay or reimburse the Trustee upon request for all reasonable fees, expenses, disbursements and advances incurred or made in accordance with this Disclosure Undertaking (including reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons regularly in its employ) or as a result of the Company's failure to perform its obligations hereunder, except to the extent that any such fees, expenses, disbursement or advance is due to the negligence or willful misconduct of the Trustee.

Section 9. Beneficiaries. This Disclosure Undertaking shall inure solely to the benefit of the Issuer, the Company, the Trustee, the Participating Underwriter, and Beneficial Owners, and shall create no rights in any other person or entity.

Section 10. Submission of Documents to the MSRB. Unless otherwise required by law, all documents provided to the MSRB pursuant to this Disclosure Undertaking shall be provided to the MSRB in an electronic, word-searchable format and shall be accompanied by identifying information, in each case as prescribed by the MSRB.

Section 11. Governing Law. This Disclosure Undertaking shall be governed by and construed in accordance with the laws of the State of New York.

*[signatures on following page]*



IN WITNESS WHEREOF, the Company has duly executed and delivered this Disclosure Undertaking as of the day and year first written above.

**GULF POWER COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

ACCEPTED AND AGREED:

**U.S. BANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Continuing Disclosure Undertaking  
\$55,000,000  
Mississippi Business Finance Corporation  
Revenue Bonds  
(Gulf Power Company Project),  
Series 2019







Printed by: ImageMaster, LLC  
[www.imagemaster.com](http://www.imagemaster.com)

**AMENDED AND RESTATED**

**CREDIT AGREEMENT**

between

**GULF POWER COMPANY,**

as Borrower,

and

**BANK OF AMERICA, N.A.,**

as Lender

DATED AS OF November 13, 2015



## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.....	1
1.1    Definitions.....	1
1.2    Computation of Time Periods and Other Definitional Provisions.....	11
1.3    Accounting Terms.....	12
1.4    Letter of Credit Amounts.....	12
1.5    Rounding Rates.....	12
SECTION 2. LOANS .....	13
2.1    Revolving Loan Commitment.....	13
2.2    Letters of Credit.....	13
2.3    Extension of Maturity Date.....	17
2.4    Method of Borrowing for Revolving Loans.....	17
2.5    Funding of Revolving Loans.....	17
2.6    Continuations and Conversions.....	18
2.7    Minimum Amounts.....	18
2.8    Reductions of Revolving Loan Commitment.....	18
2.9    Evidence of Obligations.....	19
SECTION 3. PAYMENTS .....	19
3.1    Interest.....	19
3.2    Prepayments.....	19
3.3    Payment in Full at Maturity.....	20
3.4    Fees.....	20
3.5    Place and Manner of Payments.....	20
3.6    [Reserved].....	21
3.7    Computations of Interest and Fees.....	21
SECTION 4. ADDITIONAL PROVISIONS REGARDING LOANS.....	21
4.1    Eurodollar Loans.....	21
4.2    Capital Adequacy.....	23
4.3    Compensation.....	23
4.4    Taxes.....	24
4.5    Mitigation.....	26
SECTION 5. CONDITIONS PRECEDENT .....	26
5.1    Closing Conditions.....	26
5.2    Conditions to Loans/Letters of Credit.....	27
SECTION 6. REPRESENTATIONS AND WARRANTIES .....	28
6.1    Organization and Good Standing.....	28
6.2    Due Authorization.....	28
6.3    No Conflicts.....	28
6.4    Consents.....	29
6.5    Enforceable Obligations.....	29
6.6    Financial Condition.....	29

6.7	No Default.....	29
6.8	Indebtedness and Off Balance Sheet Indebtedness.....	29
6.9	Litigation.....	29
6.10	[Reserved].....	30
6.11	Taxes.....	30
6.12	Compliance with Law.....	30
6.13	ERISA.....	30
6.14	Use of Proceeds; Margin Stock.....	30
6.15	Investment Company Act.....	30
6.16	Solvency.....	31
6.17	OFAC.....	31
6.18	Anti-Corruption Laws.....	31
SECTION 7. AFFIRMATIVE COVENANTS.....		31
7.1	Information Covenants.....	31
7.2	Preservation of Existence and Franchises.....	32
7.3	Books and Records.....	33
7.4	Compliance with Law.....	33
7.5	Payment of Taxes.....	33
7.6	Insurance.....	33
7.7	Performance of Obligations.....	33
7.8	ERISA.....	33
7.9	Use of Proceeds.....	34
7.10	Audits/Inspections.....	34
7.11	Indebtedness to Capitalization.....	34
SECTION 8. NEGATIVE COVENANTS.....		34
8.1	Nature of Business.....	34
8.2	Consolidation and Merger.....	34
8.3	Sale or Lease of Assets.....	35
8.4	Transactions with Affiliates.....	35
8.5	Fiscal Year.....	35
8.6	Liens.....	35
8.7	Sanctions.....	36
8.8	Anti-Corruption Laws.....	36
SECTION 9. EVENTS OF DEFAULT.....		36
9.1	Events of Default.....	37
9.2	Acceleration; Remedies.....	38
9.3	Allocation of Payments after Event of Default.....	39
SECTION 10. [RESERVED].....		40
SECTION 11. MISCELLANEOUS.....		40
11.1	Notices and other Communications; Facsimile Copies.....	40
11.2	Right of Set-Off.....	41
11.3	Benefit of Agreement.....	41
11.4	No Waiver; Remedies Cumulative.....	42
11.5	Payment of Expenses, etc.....	42
11.6	Amendments, Waivers and Consents.....	43
11.7	Counterparts; Telecopy.....	43



11.8	Headings.....	43
11.9	[Reserved].....	43
11.10	Survival of Indemnification and Representations and Warranties.....	43
11.11	Governing Law; Jurisdiction.....	43
11.12	Waiver of Jury Trial; Waiver of Consequential Damages.....	44
11.13	Time.....	44
11.14	Severability.....	44
11.15	Entirety.....	45
11.16	Confidentiality.....	45
11.17	Binding Effect.....	45
11.18	USA Patriot Act Notice.....	46
11.19	No Fiduciary Responsibility.....	46

## SCHEDULES

Schedule 3.5	Place and Manner of Payments
Schedule 11.1	Notices

## EXHIBITS

Exhibit 2.4	Form of Notice of Borrowing of Revolving Loans
Exhibit 2.6	Form of Notice of Continuation/Conversion
Exhibit 2.9	Form of Note
Exhibit 7.1(c)	Form of Compliance Certificate



## **CREDIT AGREEMENT**

**THIS AMENDED AND RESTATED CREDIT AGREEMENT** (this “Credit Agreement”), dated as of November 13, 2015, is entered into between **GULF POWER COMPANY**, a Florida corporation (the “Borrower”), and **BANK OF AMERICA, N.A.** (the “Lender”).

### **RECITALS**

**WHEREAS**, the Borrower and the Lender have entered into that certain Credit Agreement dated as of July 26, 2011 (as amended or modified from time to time prior to the date hereof, the “Existing Credit Agreement”); and

**WHEREAS**, the parties hereto wish to amend and restate the Existing Credit Agreement to make certain amendments and modifications as more fully set forth herein;

**NOW, THEREFORE, IN CONSIDERATION** of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Existing Credit Agreement is amended and restated in its entirety to read as follows:

### **SECTION 1.**

#### **DEFINITIONS AND ACCOUNTING TERMS**

##### **1.1 Definitions.**

As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number the plural and in the plural the singular:

“Adjusted Base Rate” means the Base Rate plus the Applicable Percentage for Base Rate Loans.

“Adjusted Eurodollar Rate” means the Eurodollar Rate plus the Applicable Percentage for Eurodollar Loans.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a corporation if such Person possesses, directly or indirectly, the power (i) to vote 20% or more of the securities having ordinary voting power for the election of directors of such corporation or (ii) to direct or cause direction of the management and policies of such corporation, whether through the ownership of voting securities, by contract or otherwise.

“Applicable Percentage” means, at any time, and with respect to all Eurodollar Loans, Base Rate Loans, Letter of Credit Fees and Unused Fees, the applicable percentage corresponding to the Senior Debt Rating in effect from time to time as described below:

Senior Debt Rating	Applicable Percentage for Eurodollar Loans and Letter of Credit Fees	Applicable Percentage for Base Rate Loans	Applicable Percentage for Unused Fees
I.    ≥ A+ from S&P ≥A1 from Moody's ≥A+ from Fitch	0.875%	0.000%	0.075%
II.    ≥ A but < A+ from S&P ≥A2 but < A1 from Moody's ≥A but < A+ from Fitch	1.000%	0.000%	0.100%
III.    ≥ A- but < A from S&P ≥A3 but < A2 from Moody's ≥A- but < A from Fitch	1.125%	0.125%	0.125%
IV.    ≥ BBB+ but < A- from S&P ≥Baa1 but < A3 from Moody's ≥BBB+ but < A- from Fitch	1.250%	0.250%	0.175%
V.    ≥ BBB but < BBB+ from S&P ≥Baa2 but < Baa1 from Moody's ≥BBB but < BBB+ from Fitch	1.500%	0.500%	0.225%
VI.    ≤ BBB- from S&P ≤ Baa3 from Moody's ≤ BBB- from Fitch or unrated by any two of S&P, Moody's or Fitch	1.750%	0.750%	0.275%

Notwithstanding the above, if at any time there is a split in Senior Debt Ratings among S&P, Moody's and Fitch and (a) two Senior Debt Ratings are equal and higher than the third Senior Debt Rating, the higher Senior Debt Ratings will apply, (b) two Senior Debt Ratings are equal and lower than the third Senior Debt Rating, the lower Senior Debt Ratings will apply or (c) no Senior Debt Ratings are equal, the intermediate Senior Debt Rating will apply. In the event that the Borrower shall maintain Senior Debt Ratings from only two of S&P, Moody's or Fitch and there is a split in such Senior Debt Ratings, (i) in the event of a single level split, the higher Senior Debt Rating (i.e. the lower pricing) will apply and (ii) in the event of a multiple level split, one level below the higher Senior Debt Rating will apply.



The Applicable Percentages for Eurodollar Loans, Base Rate Loans, Letter of Credit Fees and Unused Fees shall be determined and adjusted on the date (each a "Calculation Date") on which there is any change in the Senior Debt Rating of the Borrower. Each Applicable Percentage shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Applicable Percentage shall be applicable to all existing Revolving Loans as well as any new Revolving Loans made. The Borrower shall notify the Lender in writing immediately upon any change in its Senior Debt Rating.

"Bankruptcy Code" means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Base Rate" means, for any day, a simple rate per annum equal to the greatest of (a) the Prime Rate for such day, (b) the sum of 1/2% plus the Federal Funds Rate for such day and (c) the one month Eurodollar Rate plus 1.0%; and if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Credit Agreement.

"Base Rate Loan" means a Revolving Loan which bears interest based on the Adjusted Base Rate.

"Borrower" means Gulf Power Company, a Florida corporation, or such other Person as may become the Borrower pursuant to Section 8.2(b)(ii), and its successors.

"Borrower Obligations" means, without duplication, all of the obligations of the Borrower to the Lender, whenever arising, under this Credit Agreement, the Note or any of the other Credit Documents.

"Business Day" means any day other than a Saturday, a Sunday, a legal holiday or a day on which the Lender specifically or banking institutions generally are authorized or required by law or other governmental action to close in Charlotte, North Carolina, Atlanta, Georgia or New York, New York; provided that in the case of Eurodollar Loans, such day is also a day on which dealings between banks are carried on in Dollar deposits in the London interbank market.

"Calculation Date" has the meaning set forth in the definition of Applicable Percentage.

"Capitalization" means, with respect to the Borrower and its consolidated Subsidiaries (determined on a consolidated basis), without duplication, the sum of (a) the aggregate of (i) the capital stock (but excluding treasury stock and capital stock subscribed and unissued), other equity accounts (including retained earnings and paid-in capital, but excluding accumulated other comprehensive income and loss) of the Borrower and its Subsidiaries as the same appears on its balance sheet prepared in accordance with GAAP as of the date of determination and (ii) the principal amount of Hybrid Securities (other than Hybrid Securities that are Indebtedness) and (b) the amount of all Indebtedness of the Borrower and its Subsidiaries as of the same date.

"Cash Collateralize" means to pledge and deposit with or deliver to the Lender, as collateral for L/C Obligations, cash or deposit account balances or, if the Lender shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Lender. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral, standby letter of credit and other credit support.

“Change of Control” means the failure of The Southern Company, a Delaware corporation, to own more than 51% of the outstanding shares of the capital stock of the Borrower entitled to vote generally for the election of directors of the Borrower.

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Credit Documents” means this Credit Agreement, the Note and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto.

“Debt Rating” means any credit rating of the Borrower by S&P, Moody’s or Fitch.

“Debtor Relief Laws” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event, act or condition which, with notice or lapse of time, or both, would constitute an Event of Default.

“Default Rate” means (a) when used with respect to Borrower Obligations other than Letter of Credit Fees an interest rate equal to the interest rate (including the Applicable Percentage, if any) otherwise applicable to such Borrower Obligations plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Percentage plus 2% per annum.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Dollars” and “\$” means dollars in lawful currency of the United States of America.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which the Borrower or any ERISA Affiliate was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or the Borrower or any ERISA Affiliate incurred a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or receipt by the Borrower or any ERISA Affiliate of notice from the Multiemployer Plan that the Multiemployer Plan is in critical or endangered status, in reorganization or insolvent; (d) the filing by the Borrower or any ERISA Affiliate of a notice of



intent to terminate a Pension Plan under a distress termination under Section 4041 of ERISA, (e) receipt by Borrower or any ERISA Affiliate of notice from the PBGC of the institution by the PBGC of proceedings to terminate a Pension Plan; (f) receipt by the Borrower or any ERISA Affiliate of notice from the PBGC of the appointment of a trustee to administer a Pension Plan; (g) the determination by an actuary for the Pension Plan that the Pension Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA and claims for benefit and funding obligations in the ordinary course, upon the Borrower or any ERISA Affiliate.

“Eurodollar Loan” means a Revolving Loan bearing interest based on the Adjusted Eurodollar Rate.

“Eurodollar Base Rate” means:

(a) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Lender, as published by Bloomberg (or such other commercially available source providing such quotations as may be designated by the Lender from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at approximately 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits with a term of one month commencing that day;

provided that (i) to the extent a comparable or successor rate is approved by the Lender in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Lender, such approved rate shall be applied as otherwise reasonably determined by the Lender and (ii) if the Eurodollar Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Credit Agreement.

“Eurodollar Rate” means (a) for any Interest Period with respect to any Eurodollar Loan, a rate per annum determined by the Lender to be equal to the quotient obtained by dividing (i) the Eurodollar Base Rate for such Eurodollar Loan for such Interest Period by (ii) one minus the Eurodollar Reserve Percentage for such Eurodollar Loan for such Interest Period and (b) for any day with respect to any Base Rate Loan the interest rate on which is determined by reference to the Eurodollar Rate, a rate per annum determined by the Lender to be equal to the quotient obtained by dividing (i) the Eurodollar Base Rate for such Base Rate Loan for such day by (ii) one minus the Eurodollar Reserve Percentage for such Base Rate Loan for such day.

“Eurodollar Reserve Percentage” means for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D, as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to “Eurocurrency liabilities” as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of Eurodollar Loans is determined), whether or not the Lender has any

Eurodollar liabilities subject to such reserve requirement at that time. Eurodollar Loans shall be deemed to constitute Eurodollar liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to time to the Lender. The Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

“Event of Default” has the meaning specified in Section 9.1.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Credit Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and any regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements implementing the foregoing.

“Federal Funds Rate” means for any day the rate per annum (rounded upward to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Lender on such day on such transactions as determined by the Lender.

“Fitch” means Fitch Ratings, Inc., or any successor or assignee of the business of such company in the business of rating securities.

“FPSC” means the Florida Public Service Commission.

“GAAP” means generally accepted accounting principles in the United States applied on a consistent basis and subject to Section 1.3.

“Governmental Authority” means any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranty Obligations” means, in respect of any Person, any legally enforceable obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of another Person.

“Honor Date” has the meaning specified in Section 2.2(c)(i).

“Hybrid Securities” means (a) any Trust Preferred Obligations and any Junior Subordinated Deferred Interest Debt Obligations and (b) any other securities of the Borrower (other than capital stock of the Borrower) that are afforded equity treatment by any rating agency at the time of issuance of such securities.

“Indebtedness” means, as to any Person, without duplication: (i) all obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments,



including, without limitation, the obligations of such Person under the SCFC Notes; (ii) all obligations of such Person for the deferred purchase price of property or services (except trade accounts payable arising in the ordinary course of business); (iii) all capital lease obligations of such Person; (iv) all Indebtedness of others secured by a Lien on any properties, assets or revenues of such Person (other than stock, partnership interests or other equity interests of such Person in entities other than the Borrower or any of its Subsidiaries) to the extent of the lesser of the value of the property subject to such Lien or the amount of such Indebtedness; (v) all Guaranty Obligations; and (vi) all non-contingent obligations of such Person under any letters of credit or bankers' acceptances. It is understood and agreed for purposes of calculations under Section 7.11 of this Credit Agreement that Indebtedness (including Guaranty Obligations) shall not include any Indebtedness with respect to Hybrid Securities, as long as (A) the maturity date of such Hybrid Securities is subsequent to the Maturity Date, and (B) such Hybrid Securities are fully subordinated in right of payment to the Borrower Obligations; provided that the aggregate amount of Hybrid Securities excluded for purposes of calculation of Section 7.11 at any date shall not exceed 15% of Capitalization; provided further, that the amount of any mandatory principal amortization or defeasance of Hybrid Securities prior to the Maturity Date and any Hybrid Securities with a maturity date prior to the Maturity Date shall, in each case, be included in this definition of Indebtedness.

"Interest Payment Date" means (a) as to Base Rate Loans, the last day of each fiscal quarter of the Borrower and the Maturity Date and (b) as to Eurodollar Loans, the last day of each applicable Interest Period and the Maturity Date. In addition, where the applicable Interest Period for a Eurodollar Loan is greater than three months, then an Interest Payment Date shall also occur on the last day of each three-month period during such Interest Period. If an Interest Payment Date falls on a date which is not a Business Day, such Interest Payment Date shall be deemed to be the next succeeding Business Day, except that in the case of Eurodollar Loans where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day.

"Interest Period" means, as to Eurodollar Loans, a period of one, two, three or six months' duration or such other periods as agreed to by the Lender, as the Borrower may elect and as may be available, commencing, in each case, on the date of the borrowing (including continuations and conversions of Eurodollar Loans); provided, however, (i) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (ii) no Interest Period shall extend beyond the Maturity Date and (iii) with respect to Eurodollar Loans, where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement and instrument entered into by the Lender and the Borrower or in favor of the Lender or the Borrower and relating to any such Letter of Credit.

"Junior Subordinated Deferred Interest Debt Obligations" means subordinated deferrable interest debt obligations of the Borrower or one of its Subsidiaries.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means the Lender’s funding of any L/C Borrowing.

“L/C Beneficiary” means any Person named as the beneficiary on any Letter of Credit issued hereunder.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Loan.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof, extension of the expiry date thereof or the increase of the amount thereof.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4. For all purposes of this Credit Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Letter of Credit” means any standby letter of credit issued hereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Lender.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.2(h).

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction or other similar recording or notice statute, and any lease in the nature thereof).

“Material Adverse Effect” means a material adverse effect on (a) the operations, assets, financial condition or business of the Borrower, (b) the ability of the Borrower to perform its obligations under this Credit Agreement and the other Credit Documents or (c) the validity or enforceability of this Credit Agreement, any of the other Credit Documents, or the rights and remedies of the Lender hereunder or thereunder; provided, that neither a downgrade in any Debt



Rating nor the inability of the Borrower to place commercial paper or variable rate tax exempt pollution control bonds shall, in and of itself, constitute a Material Adverse Effect.

“Maturity Date” means November 13, 2018, as such date may be extended pursuant to Section 2.3; provided that if the Maturity Date as determined hereunder falls on a day that is not a Business Day, such Maturity Date shall be deemed to fall on the next preceding Business Day.

“Moody’s” means Moody’s Investors Service, Inc., or any successor or assignee of the business of such company in the business of rating securities.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or has any continuing liability.

“Net Tangible Assets” means, as of any date, the total assets shown on the balance sheet of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP less (a) all current liabilities and minority interests and (b) goodwill and other identifiable intangibles.

“Note” means the promissory note of the Borrower in favor of the Lender evidencing the Revolving Loans and substantially in the form of Exhibit 2.9, as such promissory note may be amended, modified, supplemented or replaced from time to time.

“Notice of Borrowing of Revolving Loans” means a request by the Borrower for a Revolving Loan (or any continuation or conversion thereof) in the form of Exhibit 2.4.

“Notice of Continuation/Conversion” means a request by the Borrower for the continuation or conversion of a Revolving Loan in the form of Exhibit 2.6.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off Balance Sheet Indebtedness” means any obligation of a Person that would be considered indebtedness for tax purposes but is not set forth on the balance sheet of such Person, including, but not limited to, (a) any synthetic lease, tax retention operating lease, off balance sheet loan or similar off-balance sheet financing product of such Person, (b) the aggregate amount of uncollected accounts receivables of such Person subject at such time to a sale of receivables (or similar transaction) and (c) obligations of any partnership or joint venture that is recourse to such Person.

“Other Taxes” has the meaning set forth in Section 4.4(b).

“Participation Purchaser” shall have the meaning assigned to such term in Section 11.3(d).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth

in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, and 436 of the Code and Sections 302 and 303 of ERISA.

“Pension Plan” means any “employee pension benefit plan”, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is maintained, contributed to or required to be contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Person” means any individual, partnership (general or limited), limited liability company, joint venture, firm, corporation, association, trust or other enterprise (whether or not incorporated), or any government or political subdivision or any agency, department or instrumentality thereof.

“Prime Rate” means the per annum rate of interest established from time to time by the Lender at its principal office as its “prime rate.” Such rate is a rate set by the Lender based upon various factors including the Lender’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in the interest rate resulting from a change in the Prime Rate shall become effective as of the opening of business on the day on which such change in the Prime Rate is announced by the Lender.

“Regulation D, U or X” means Regulation D, U or X, respectively, of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Reportable Event” means a “reportable event” as defined in Section 4043(c) of ERISA with respect to which the notice requirements to the PBGC have not been waived.

“Responsible Officer” means, as to the Borrower, any of the Chief Executive Officer, Chief Financial Officer, Treasurer, Comptroller, Secretary, Assistant Treasurer or Assistant Secretary of the Borrower.

“Revolving Loan Commitment” means THIRTY MILLION DOLLARS (\$30,000,000) as such amount may be otherwise reduced in accordance with Section 2.8.

“Revolving Loans” means the revolving loans made by the Lender to the Borrower pursuant to Section 2.1(a).

“Sanction(s)” means any economic or financial sanction administered or enforced by the United States Government, including, without limitation, OFAC, the United Nations Security Council and the European Union or Her Majesty’s Treasury (“HMT”).

“S&P” means Standard & Poor’s Financial Services LLC, a division of McGraw-Hill Financial and any successor thereto.

“SCFC” means Southern Company Funding Corporation, a Delaware corporation, an Affiliate of the Borrower and a wholly-owned Subsidiary of The Southern Company, a Delaware corporation.



“SCFC Notes” means one or more intercompany notes issued by the Borrower to SCFC in support of commercial paper issued by SCFC on behalf of the Borrower pursuant to that certain Financial Services Agreement, dated as of March 15, 2001, between the Borrower and SCFC.

“Senior Debt Rating” means the long-term senior unsecured, non-credit enhanced debt rating of the Borrower by each of S&P, Moody’s or Fitch.

“Significant Subsidiary” means a Subsidiary of the Borrower which represents more than 15% of the Borrower’s assets on a consolidated basis.

“Subsidiary” means, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries has more than 50% equity interest at any time.

“Taxes” has the meaning set forth in Section 4.4(a).

“Trust Preferred Obligations” means the subordinated, deferrable interest debt securities of the Borrower, and, without duplication, any related securities issued by a trust or other special purpose entity in connection therewith.

“Unreimbursed Amount” has the meaning specified in Section 2.2(c)(i).

“Unused Fees” has the meaning set forth in Section 3.4(a).

“Unused Revolving Loan Commitment” means, for any period from the Closing Date to the Maturity Date, the amount by which (a) the average Revolving Loan Commitment for such period exceeds (b) the daily average sum for such period of the aggregate principal amount of all Revolving Loans plus L/C Obligations outstanding.

## **1.2 Computation of Time Periods and Other Definitional Provisions.**

With reference to this Credit Agreement and each other Credit Document, unless otherwise specified herein or in such other Credit Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Credit Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the

words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Credit Document, shall be construed to refer to such Credit Document in its entirety and not to any particular provision thereof, (iv) all references in a Credit Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, Recitals of and Exhibits and Schedules to, the Credit Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all assets and properties, tangible and intangible, real and personal, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Credit Documents are included for convenience of reference only and shall not affect the interpretation of this Credit Agreement or any other Credit Document.

### **1.3 Accounting Terms.**

Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lender hereunder shall be prepared, in accordance with GAAP applied on a consistent basis. All calculations made for the purposes of determining compliance with this Credit Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial statements delivered pursuant to Section 7.1 (or, prior to the delivery of the first financial statements pursuant to Section 7.1, consistent with the financial statements described in Section 5.1(e)); provided, however, (a) if (i) the Borrower shall object to determining such compliance on such basis at the time of delivery of such financial statements due to any change in GAAP or the rules promulgated with respect thereto or (ii) the Lender shall so object in writing within 30 days after delivery of such financial statements, then such calculations shall be made on a basis consistent with the most recent financial statements delivered by the Borrower to the Lender as to which no such objection shall have been made and (b) it is agreed that for purposes of calculations under Section 7.11 of this Credit Agreement, capital lease obligations shall be calculated in accordance with GAAP as of the Closing Date unless otherwise agreed by the Borrower and the Lender.

### **1.4 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

### **1.5 Rounding Rates.**



Any financial ratios required to be maintained by the Borrower pursuant to this Credit Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number). The Lender does not warrant, nor accept responsibility, nor shall the Lender have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurodollar Base Rate" or with respect to any comparable or successor rate thereto (except such as shall result from the gross negligence or willful misconduct of the Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction).

## **SECTION 2.**

### **LOANS**

#### **2.1 Revolving Loan Commitment.**

Subject to the terms and conditions set forth herein, the Lender agrees to make revolving loans to the Borrower, in Dollars, at any time and from time to time, during the period from the Closing Date to the Maturity Date (each a "Revolving Loan" and collectively the "Revolving Loans"); provided, however, that the sum of the aggregate amount of Revolving Loans plus the aggregate L/C Obligations outstanding shall not exceed the Revolving Loan Commitment. Subject to the terms of this Credit Agreement, the Borrower may borrow, repay and reborrow the amount of the Revolving Loan Commitment.

#### **2.2 Letters of Credit.**

##### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, the Lender agrees (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, the sum of the aggregate amount of Revolving Loans outstanding plus the aggregate amount of L/C Obligations outstanding shall not exceed the Revolving Loan Commitment.

(ii) Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding subsection (i).

(iii) Subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the period set forth in subsection (i)(A), obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(iv) The Lender shall not issue any Letter of Credit, if:

(A) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Lender has approved such expiry date;

(B) the issuance of such Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally;

(C) except as otherwise agreed by the Lender, such Letter of Credit is in an initial stated amount less than \$500,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; or

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(v) The Lender shall not amend any Letter of Credit if the Lender would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(vi) The Lender shall not be under an obligation to amend a Letter of Credit if (A) the Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the L/C Beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the Lender in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the Lender not later than 11:00 a.m. at least two Business Days (or such later date and time as the Lender may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be.

(ii) In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Lender: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the L/C Beneficiary; (E) the documents to be presented by such L/C Beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such L/C Beneficiary in case of any drawing thereunder; and (G) such other matters as the L/C Issuer may reasonably require.

(iii) In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Lender (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Lender may reasonably require.

(iv) Subject to the terms and conditions hereof, the Lender shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Lender's usual and customary business practices, unless the Lender has received written notice from the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 5.2 shall not then be satisfied.

(vv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the L/C Beneficiary, the Lender will also deliver to the Borrower a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from any L/C Beneficiary of any notice of a drawing under a Letter of Credit, the Lender shall promptly (and in any event not later than one Business Day prior to the date of any payment by the Lender under a Letter of Credit (each such date, an “Honor Date”), unless the terms of the applicable Letter of Credit require otherwise) notify the Borrower thereof. Not later than 11:00 a.m. on the Honor Date, the Borrower shall reimburse the Lender an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the Lender by such time, the Borrower shall be deemed to have requested a Revolving Loan comprised of a Base Rate Loan to be disbursed, and the Lender shall be deemed to have made a Revolving Loan to the Borrower, on the Honor Date in an amount equal to the amount of the unreimbursed drawing (the “Unreimbursed Amount”), without regard to the minimum and multiples specified in Section 2.7 for the principal amount of Revolving Loans, but subject to the amount of the unutilized portion of the Revolving Loan Commitment and the conditions set forth in Section 5.2 (other than the delivery of a Notice of Borrowing of Revolving Loans).

(ii) [Reserved.]

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Loan because the conditions set forth in Section 5.2 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the Lender an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate.

(d) [Reserved.]

(e) Obligations Absolute. The obligation of the Borrower to reimburse the Lender for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances (other than any circumstances resulting from the gross negligence or willful misconduct of the Lender), including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement or any other Credit Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any L/C Beneficiary or any transferee of such Letter of Credit (or any Person for whom any such L/C Beneficiary or any such transferee may be acting), the Lender or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit; or



(iv) any payment by the Lender under such Letter of Credit against presentation of a draft or certificate that substantially complies with the terms of such Letter of Credit; or any payment made by the Lender under such Letter of Credit in accordance with the material terms of such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any L/C Beneficiary or any transferee permitted by such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Lender. The Borrower shall be conclusively deemed to have waived any such claim against the Lender and its correspondents unless such notice is given as aforesaid.

(f) Role of Lender. The Borrower agrees that, in paying any drawing under a Letter of Credit, the Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. The Borrower hereby assumes all risks of the acts or omissions of any L/C Beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the L/C Beneficiary or transferee at law or under any other agreement. None of the Lender, any of its Affiliates nor any correspondent, participant or assignee of the Lender shall be liable or responsible for any of the matters described in clauses (i) through (iv) of Section 2.2(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the Lender, and the Lender may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the Lender's willful misconduct or gross negligence or the Lender's willful failure to pay under any Letter of Credit after the presentation to it by the L/C Beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP. Unless otherwise expressly agreed by the Lender and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Lender a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Percentage times the maximum daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable fifteen (15) days after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Percentage during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Percentage separately for each period during such quarter that such Applicable Percentage was in effect. Notwithstanding anything to the contrary contained herein,

upon the request of the Lender, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to the Lender. The Borrower shall pay directly to the Lender for its own account a fronting fee with respect to each Letter of Credit, at a rate per annum equal to 0.20% computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable fifteen (15) days after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4. In addition, the Borrower shall pay directly to the Lender for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Lender relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

### **2.3 Extension of Maturity Date.**

Not more than 75 days and not less than 20 days prior to each annual anniversary of the Closing Date, the Borrower may, in each case, request in writing that the Lender extend the then current Maturity Date for an additional one year; provided, however, that the Maturity Date may be extended under this Section 2.3 no more than three (3) times in the aggregate. The Lender shall provide the Borrower, not more than 15 days subsequent to any such request by the Borrower, with written notice regarding whether it agrees to extend the then current Maturity Date. Each decision by the Lender shall be in its sole discretion and failure by the Lender to give timely written notice hereunder shall be deemed a decision by the Lender not to extend the Maturity Date. If the Lender timely agrees in writing to extend the Maturity Date, then the Maturity Date shall be extended for an additional one year pursuant to a duly executed written amendment to this Credit Agreement. If the Lender fails to extend the Maturity Date, then the Borrower shall pay in full all outstanding Revolving Loans, together with accrued and unpaid interest thereon and all sums with respect thereto; it being understood that after the Maturity Date, the Borrower may no longer request, and the Lender is no longer obligated to make, new Revolving Loans under this Credit Agreement.

### **2.4 Method of Borrowing for Revolving Loans.**

In the case of Revolving Loans, by no later than 2:00 p.m. (a) on the date of the requested borrowing of Revolving Loans that will be Base Rate Loans or (b) three Business Days prior to the date of the requested borrowing of Revolving Loans that will be Eurodollar Loans, the Borrower shall submit a written Notice of Borrowing of Revolving Loans in the form of Exhibit 2.4 completed and signed by a Responsible Officer of the Borrower to the Lender setting forth (i) the amount requested, (ii) whether such Revolving Loans shall accrue interest at the Adjusted Base Rate or the Adjusted Eurodollar Rate, (iii) with respect to Revolving Loans that will be Eurodollar Loans, the Interest Period applicable thereto and (iv) certification that the Borrower has complied in all respects with Section 5.2.

### **2.5 Funding of Revolving Loans.**

Upon receipt of a Notice of Borrowing of Revolving Loans, the Lender shall make the amount of the requested Revolving Loans available to the Borrower by 4:00 p.m. (in the case of any Notice of Borrowing of Revolving Loans delivered after 12:00 noon) on the date specified in the Notice of Borrowing of Revolving Loans by deposit in Dollars of immediately available funds to the account of the Borrower that is designated on the Notice of Borrowing of Revolving Loans; provided, that, for any Notice of Borrowing of Revolving Loans submitted by the Borrower no later than 12:00 noon, the Lender shall made the requested Revolving Loans available to the Borrower by 2:00 p.m. on the date specified in the Notice of Borrowing of Revolving Loans.

## **2.6 Continuations and Conversions.**

The Borrower shall have the option, on any Business Day, to continue existing Eurodollar Loans for a subsequent Interest Period, to convert Base Rate Loans into Eurodollar Loans or to convert Eurodollar Loans in Dollars into Base Rate Loans; provided, however, that (a) each such continuation or conversion must be requested by the Borrower pursuant to a written Notice of Continuation/Conversion, in the form of Exhibit 2.6, in compliance with the terms set forth below, (b) except as provided in Section 4.1, Eurodollar Loans may only be continued or converted into Base Rate Loans on the last day of the Interest Period applicable hereto, (c) Eurodollar Loans may not be continued nor may Base Rate Loans be converted into Eurodollar Loans during the existence and continuation of a Default or Event of Default and (d) any request to extend a Eurodollar Loan that fails to comply with the terms hereof or any failure to request an extension of a Eurodollar Loan at the end of an Interest Period shall constitute a conversion in each case, to a Base Rate Loan on the last day of the applicable Interest Period. Each continuation or conversion must be requested by the Borrower no later than 12:00 p.m. (noon) (i) on the date for a requested conversion of a Eurodollar Loan to a Base Rate Loan or (ii) three Business Days prior to the date for a requested continuation of a Eurodollar Loan or conversion of a Base Rate Loan to a Eurodollar Loan, in each case pursuant to a written Notice of Continuation/Conversion submitted to the Lender which shall set forth (A) whether the Borrower wishes to continue or convert such Revolving Loans and (B) if the request is to continue a Eurodollar Loan or convert a Base Rate Loan to a Eurodollar Loan, the Interest Period applicable thereto.

## **2.7 Minimum Amounts.**

Each request for a Revolving Loan or a conversion or continuation hereunder shall be subject to the following requirements: (a) each Eurodollar Loan shall be in a minimum of \$5,000,000, (b) each Base Rate Loan shall be in a minimum amount of the lesser of \$5,000,000 or the remaining amount available to be borrowed and (c) no more than ten Eurodollar Loans shall be outstanding hereunder at any one time. For the purposes of this Section 2.7, all Eurodollar Loans with the same Interest Periods shall be considered as one Eurodollar Loan, but Eurodollar Loans with different Interest Periods, even if they begin on the same date, shall be considered separate Eurodollar Loans. Any Revolving Loan requested shall be in an integral multiple of \$1,000,000 unless the request is for all of the remaining amount of the Revolving Loan Commitment available to be borrowed.

## **2.8 Reductions of Revolving Loan Commitment.**

Upon at least two Business Days' prior written notice to the Lender, the Borrower shall have the right to permanently terminate or reduce the aggregate unused amount of the Revolving Loan Commitment, at any time or from time to time; provided that (a) each partial reduction shall be in an aggregate amount at least equal to \$5,000,000 and in integral multiples of \$1,000,000 above such amount, and (b) no reduction shall be made which would reduce the Revolving Loan Commitment to an amount less than the then outstanding Revolving Loans plus the aggregate L/C Obligations outstanding. Any



reduction in (or termination of) the Revolving Loan Commitment shall be permanent and may not be reinstated.

## **2.9 Evidence of Obligations.**

(a) Lender Records. The date, amount, type, interest rate and duration of Interest Period (if applicable) of each Revolving Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books; provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing hereunder or under the Note in respect of the Revolving Loans to be evidenced by the Note, and each such recordation or endorsement shall be conclusive and binding absent manifest error.

(b) Note. The Revolving Loans made by the Lender shall be evidenced by a promissory note of the Borrower payable to the Lender in substantially the form of Exhibit 2.9 (the "Note") and shall be delivered by the Borrower in accordance with Section 5.1(a).

## **SECTION 3.**

### **PAYMENTS**

#### **3.1 Interest.**

(a) Interest Rate.

(i) All Revolving Loans that are Base Rate Loans shall accrue interest at the Adjusted Base Rate.

(ii) All Eurodollar Loans shall accrue interest at the Adjusted Eurodollar Rate applicable to such Eurodollar Loan.

(b) Default Rate of Interest. Upon the occurrence, and during the continuance, of an Event of Default, the principal of and, to the extent permitted by law, interest on the Revolving Loans and any other amounts owing hereunder or under the other Credit Documents shall bear interest, payable on demand, at the Default Rate.

(c) Interest Payments. Interest on Revolving Loans shall be due and payable in arrears on each Interest Payment Date.

#### **3.2 Prepayments.**

(a) Voluntary Prepayments. The Borrower shall have the right to prepay Revolving Loans in whole or in part from time to time without premium or penalty; provided, however, that (i) Eurodollar Loans may only be prepaid on three Business Days' prior written notice to the Lender and any prepayment of Eurodollar Loans will be subject to Section 4.3; and (ii) each such partial prepayment of Revolving Loans shall be in the minimum principal amount of \$1,000,000. Amounts prepaid hereunder shall be applied as the Borrower may elect; provided that if the Borrower fails to specify the application of a voluntary prepayment then such prepayment shall be applied first to Revolving Loans that are Base Rate Loans, and second to Eurodollar Loans in direct order of Interest Period maturities.

(b) **Mandatory Prepayments.**

(i) If at any time the aggregate amount of Revolving Loans plus the aggregate L/C Obligations outstanding exceeds the Revolving Loan Commitment, the Borrower shall immediately make a principal payment to the Lender in the manner and in an amount such that the sum of the aggregate amount of Revolving Loans outstanding plus the aggregate L/C Obligations outstanding is less than or equal to the Revolving Loan Commitment.

(ii) Any prepayments made under this Section 3.2(b) shall be subject to Section 4.3 and shall be applied first to Revolving Loans that are Base Rate Loans, and second to Eurodollar Loans in direct order of Interest Period maturities.

**3.3 Payment in Full at Maturity.**

Subject to the terms of Section 2.3, on the Maturity Date, the entire outstanding principal amount owing under the Credit Documents, together with accrued but unpaid interest and all other sums owing under the Credit Documents, shall be due and payable in full, unless accelerated sooner pursuant to Section 9.2.

**3.4 Fees.**

(a) Unused Fees.

(i) In consideration of the Revolving Loan Commitment being made available by the Lender hereunder, the Borrower agrees to pay to the Lender a per annum fee equal to the Applicable Percentage for Unused Fees multiplied by the Unused Revolving Loan Commitment (the “Unused Fees”).

(ii) The accrued Unused Fees shall be due and payable in arrears fifteen days after the end of each fiscal quarter of the Borrower for the immediately preceding fiscal quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date, as well as on the Maturity Date.

(b) Upfront Fee. The Borrower shall pay to the Lender, on the Closing Date, a fee equal to 0.15% multiplied by the Revolving Loan Commitment.

**3.5 Place and Manner of Payments.**

All payments of principal, interest, fees, expenses and other amounts to be made by the Borrower under this Credit Agreement shall be made unconditionally and without deduction for any counterclaim, defense, recoupment or setoff. All such payments shall be received not later than 2:00 p.m. on the date when due in Dollars and in immediately available funds by the Lender as set forth on Schedule 3.5 (which Schedule may be amended by the Lender at any time by delivering written notice of such amendment to the Borrower). The Borrower shall, at the time it makes any payment under this Credit Agreement, specify to the Lender the Revolving Loans, fees or other amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that it fails to specify, or if such application would be inconsistent with the terms hereof, the Lender shall apply such payment in such manner as it reasonably determines in its sole discretion). Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (subject to accrual of interest and fees for the period of such extension), except that, in the case of Eurodollar

Loans (or interest payable with respect thereto), if the extension would cause the payment to be made in the next following calendar month, then such payment shall instead be made on the next preceding Business Day.

**3.6 [Reserved].**

**3.7 Computations of Interest and Fees.**

(a) Except for Base Rate Loans bearing interest based on the Prime Rate, on which interest shall be computed on the basis of a 365 or 366 day year, as the case may be, all computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days.

(b) It is the intent of the Lender and the Borrower to conform to and contract in strict compliance with applicable usury Law from time to time in effect. All agreements between the Lender and the Borrower are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, or received under this Credit Agreement, under the Note or otherwise, exceed the maximum nonusurious amount permissible under applicable Law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such documents shall be automatically reduced to the maximum nonusurious amount permitted under applicable Law, without the necessity of execution of any amendment or new document. If the Lender shall ever receive anything of value which is characterized as interest on the Revolving Loans under applicable Law and which would, apart from this provision, be in excess of the maximum lawful amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Revolving Loans and not to the payment of interest, or refunded to the Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Revolving Loans. The right to demand payment of the Revolving Loans or any other indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and the Lender does not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lender with respect to the Revolving Loans shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Revolving Loans so that the amount of interest on account of such indebtedness does not exceed the maximum nonusurious amount permitted by applicable Law.

**SECTION 4.**

**ADDITIONAL PROVISIONS REGARDING LOANS**

**4.1 Eurodollar Loans.**

(a) Unavailability. In the event that the Lender shall have determined in good faith (i) that Dollar deposits in the principal amounts requested with respect to a Eurodollar Loan are not generally available in the London interbank Eurodollar market or (ii) that reasonable means do not exist for ascertaining the Eurodollar Rate or the Lender shall have determined that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan



does not adequately and fairly reflect the cost to the Lender of funding such Eurodollar Loan, the Lender shall, as soon as practicable thereafter, give written notice of such determination to the Borrower. In the event of any such determination under clauses (i) or (ii) above, until the Lender shall have advised the Borrower that the circumstances giving rise to such notice no longer exist, (A) any request by the Borrower for Eurodollar Loans shall be deemed to be a request for Base Rate Loans and (B) any request by the Borrower for conversion into or continuation of Eurodollar Loans shall be deemed to be a request for conversion into or continuation of Base Rate Loans.

(b) Change in Legality.

Notwithstanding any other provision herein, if any (i) adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted, implemented or issued) shall make it unlawful for the Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrower, the Lender may, until such time as the circumstances giving rise to such unlawfulness no longer exists:

(A) declare that Eurodollar Loans, and conversions to or continuations of Eurodollar Loans, will not thereafter be made by the Lender hereunder, whereupon any request by the Borrower for, or for conversion into or continuation of, Eurodollar Loans shall be deemed a request for, or for conversion into or continuation of, Base Rate Loans, unless such declaration shall be subsequently withdrawn; and

(B) require that all outstanding Eurodollar Loans made by it be converted to Base Rate Loans in which event all such Eurodollar Loans shall be automatically converted to Base Rate Loans.

In the event the Lender shall exercise its rights under clause (A) or (B) above, all payments and prepayments of principal which would otherwise have been applied to repay the Eurodollar Loans that would have been made by the Lender or the converted Eurodollar Loans of the Lender shall instead be applied to repay the Base Rate Loans made by the Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(c) Increased Costs. If at any time the Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to the making, the commitment to make or the maintaining of any Eurodollar Loan or Letter of Credit because of (i) any adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority including, without limitation, the imposition, modification or deemed applicability of any reserves, deposits or similar requirements (such as, for example, but not limited to, a change in official reserve requirements, but, in all events, excluding reserves

required under Regulation D to the extent included in the computation of the Adjusted Eurodollar Rate) (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted or issued), then the Borrower shall pay to the Lender within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as the Lender may determine in its sole discretion) as may be required to compensate the Lender for such increased costs or reductions in amounts receivable hereunder.

Each determination and calculation made by the Lender under this Section 4.1 shall, absent manifest error, be binding and conclusive on the parties hereto.

#### **4.2 Capital Adequacy.**

If, after the date hereof, the Lender has determined that the adoption or effectiveness of any applicable Law, rule or regulation regarding capital adequacy or liquidity, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Lender's (or parent corporation's) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which the Lender, or its parent corporation, could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration the Lender's (or parent corporation's) policies with respect to capital adequacy and liquidity)(provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted, implemented or issued), then the Borrower shall pay to the Lender within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, such additional amount or amounts as will compensate the Lender for such reduction. Each determination by the Lender of amounts owing under this Section 4.2 shall, absent manifest error, be conclusive and binding on the parties hereto.

#### **4.3 Compensation.**

The Borrower shall compensate the Lender, within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, for all reasonable losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by the Lender to fund its Eurodollar Loans) which the Lender may sustain:

- (a) if for any reason (other than a default by the Lender) a borrowing, continuation or conversion of Eurodollar Loans does not occur on a date specified therefor in a Notice of Borrowing of Revolving Loans or Notice of Continuation/Conversion, as the case may be;

(b) if any prepayment, repayment, continuation or conversion of any Eurodollar Loan occurs on a date which is not the last day of an Interest Period applicable thereto, including, without limitation, in connection with any demand, acceleration, mandatory prepayment or otherwise (including any demand under this Section 4); or

(c) if the Borrower fails to repay its Eurodollar Loans when required by the terms of this Credit Agreement.

Calculation of all amounts payable to the Lender under this Section 4.3 shall be made as though the Lender has actually funded its relevant Eurodollar Loan through the purchase of a Eurodollar deposit bearing interest at the Adjusted Eurodollar Rate in an amount equal to the amount of that Revolving Loan, having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of the Lender to a domestic office of the Lender in the United States of America; provided, however, that the Lender may fund each of its Eurodollar Loans in any manner it sees fit and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section 4.3. Each determination and calculation hereunder shall be in good faith and shall be conclusive absent manifest error.

#### **4.4 Taxes.**

(a) Tax Liabilities Imposed on the Lender. (i) Any and all payments by the Borrower hereunder or under any of the Credit Documents shall be made, in accordance with the terms hereof and thereof, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (A) taxes measured by net income and franchise taxes imposed on the Lender by the jurisdiction under the laws of which the Lender is organized or transacting business or any political subdivision thereof and (B) any U.S. federal withholding taxes imposed under FATCA (all such non-excluded taxes, being hereinafter referred to as "Taxes"). If any applicable Laws (as determined in the good faith discretion of the Lender or Borrower, as applicable) require the deduction or withholding of any tax from any such payment hereunder, then the Lender or Borrower shall be entitled to make such deduction or withholding. If the Borrower shall be required by applicable Law to deduct any taxes from or in respect of any sum payable hereunder to the Lender, (A) to the extent that the withholding or deduction is made on account of Taxes, the sum payable by the Borrower shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 4.4) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (B) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Other Taxes. In addition, the Borrower agrees to pay, upon written notice from the Lender and prior to the date when penalties attach thereto, all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any state or political subdivision thereof or any applicable foreign jurisdiction that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Credit Agreement (collectively, the "Other Taxes").

(c) Refunds. If the Lender shall become aware that it is entitled to claim a refund (or a refund in the form of a credit) (each, a "Refund") from a Governmental Authority (as a result of any error in the amount of Taxes or Other Taxes paid to such Governmental Authority or otherwise) of Taxes or Other Taxes which the Borrower has paid, or with respect to which the Borrower has paid additional amounts, pursuant to this Section 4.4, it shall promptly notify the



Borrower in writing of the availability of such Refund and shall, within 30 days after receipt of written notice by the Borrower make a claim to such Governmental Authority for such Refund at the Borrower's expense if, in the judgment of the Lender, the making of such claim will not be otherwise disadvantageous to it; provided that nothing in this subsection (c) shall be construed to require the Lender to institute any administrative proceeding (other than the filing of a claim for any such Refund) or judicial proceeding to obtain such Refund.

If the Lender receives a Refund from a Governmental Authority (as a result of any error in the amount of Taxes or Other Taxes paid to such Governmental Authority or otherwise) of any Taxes or Other Taxes which have been paid by the Borrower, or with respect to which the Borrower has paid additional amounts pursuant to this Section 4.4, it shall promptly pay to the Borrower the amount so received (but only to the extent of payments made, or additional amounts paid, by the Borrower under this Section 4.4 with respect to Taxes or Other Taxes giving rise to such Refund), net of all reasonable out-of-pocket expenses (including the net amount of taxes, if any, imposed on the Lender with respect to such Refund) of the Lender, and without interest (other than interest paid by the relevant Governmental Authority with respect to such Refund); provided, however, that the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower (plus penalties, interest or other charges) to the Lender in the event the Lender is required to repay such Refund to such Governmental Authority. Nothing contained in this Section 4.4(c) shall require the Lender to make available any of its tax returns (or any other information that it deems to be confidential or proprietary) or to alter its tax accounting practices.

(d) Foreign Lender. If the Lender (which, for purposes of this Section 4.4, shall include any Affiliate of the Lender that makes any Eurodollar Loan pursuant to the terms of this Credit Agreement) is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) it shall submit to the Borrower on or before the Closing Date, two duly completed and signed copies of (1) Form W-8BEN or W-8BEN-E, as applicable, of the United States Internal Revenue Service, or a successor applicable form, entitling the Lender to a complete exemption from withholding on all amounts to be received by the Lender pursuant to this Credit Agreement and/or any Notes, (2) Form W-8ECI of the United States Internal Revenue Service, or a successor applicable form, relating to all amounts to be received by the Lender pursuant to this Credit Agreement and/or any Notes or (3) any other form (together with supplementary documentation) prescribed by applicable Laws entitling the Lender to a complete exemption from United States withholding tax. The Lender shall, from time to time after submitting either such form, submit to the Borrower such additional duly completed and signed copies of such forms (or such successor forms or other documents as shall be adopted from time to time by the relevant United States taxing authorities) as may be (1) reasonably requested in writing by the Borrower and (2) appropriate under then current United States laws or regulations. If and for any period during which the provisions of this Section 4.4(d) are not satisfied by or with respect to the Lender, no provision of this Credit Agreement shall require the Borrower to indemnify with respect to any resulting withholding of United States taxes imposed on or with respect to the Lender as a result of such noncompliance for the periods to which such noncompliance relates, unless such noncompliance is directly attributable to a change in a law, rule or regulation issued by a Governmental Authority which results in the inability of the Lender to provide such form. If a payment made to the Lender hereunder would be subject to United States federal withholding tax imposed by FATCA if the Lender were to fail to comply with the applicable requirements of FATCA, the Lender shall deliver to the Borrower, at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower, such documentation prescribed by applicable Law and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA, to determine that the

Lender has or has not complied with the Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(e) United States Lender. If the Lender is a United States Person, it shall, on or prior to the date it becomes a party hereto and from time to time thereafter if requested in writing by the Borrower, provide the Borrower with a properly completed and duly executed copy of Internal Revenue Service Form W-9, or any successor to such form.

#### **4.5 Mitigation**

The Lender shall use reasonable efforts to avoid or mitigate any increased cost or suspension of the availability of an interest rate or the payment of Taxes or Other Taxes under Sections 4.1 through 4.4 above to the greatest extent practicable (including transferring the Revolving Loans to another lending office or Affiliate of the Lender) unless, in the reasonable opinion of the Lender, such efforts would be likely to have an adverse effect upon it.

### **SECTION 5.**

#### **CONDITIONS PRECEDENT**

##### **5.1 Closing Conditions**

The obligation of the Lender to enter into this Credit Agreement is subject to satisfaction of the following conditions on or prior to the Closing Date (in form and substance acceptable to the Lender):

(a) Executed Credit Documents. Receipt by the Lender of duly executed copies of (i) this Credit Agreement and (ii) the Note.

(b) Officer's Certificate. Receipt by the Lender of a certificate of a Responsible Officer of the Borrower stating that, as of the Closing Date, (i) there exists no Default or Event of Default, (ii) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects, (iii) the Borrower is in compliance with the financial covenant set forth in Section 7.11, as demonstrated by the covenant calculations on a schedule attached thereto and (iv) the conditions set forth in Sections 5.1(g) and (i) have been satisfied.

(c) Opinion of Counsel. Receipt by the Lender of an opinion, or opinions, satisfactory to the Lender, addressed to the Lender from legal counsel to the Borrower.

(d) Corporate Documents. Receipt by the Lender of the following:

(i) Charter Documents. (A) A copy of the Borrower's Articles of Incorporation, certified by the Secretary of State of the State of Florida or (B) a representation that the Borrower's Articles of Incorporation have not changed since the date of delivery of the certificate of the Secretary of State pursuant to the Existing Credit Agreement.

(ii) Bylaws. A copy of the bylaws of the Borrower certified by a secretary or assistant secretary of the Borrower to be true and correct as of the Closing Date.

(iii) Resolutions. Copies of resolutions of the Board of Directors of the Borrower approving and adopting the Credit Documents to which it is a party and the transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of the Borrower to be true and correct and in force and effect as of the Closing Date.

(iv) Good Standing. Copies of (A) certificates of good standing, existence or its equivalent with respect to the Borrower certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of incorporation and the principal place of business of the Borrower and (B) to the extent available, a certificate indicating payment of all corporate franchise taxes certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of its incorporation and the principal place of business of the Borrower.

(v) Incumbency. An incumbency certificate of the Borrower, certified by a secretary or assistant secretary of the Borrower to be true and correct as of the Closing Date.

(e) Financial Statements. Receipt by the Lender of (i) the consolidated audited financial statements of the Borrower dated as of December 31, 2014, including balance sheets and income and cash flow statements, in each case audited by independent public accountants of recognized standing and prepared in accordance with GAAP and (ii) the consolidated unaudited quarterly financial statements of the Borrower for the three month periods as of and for March 31, 2015, June 30, 2015 and September 30, 2015, including balance sheets and income and cash flow statements, in each case prepared in accordance with GAAP.

(f) Fees and Expenses. Payment by the Borrower of all fees and expenses owed by it to the Lender, including, without limitation, payment of the upfront fee payable pursuant to Section 3.4(b).

(g) Material Adverse Effect. No event or condition shall have occurred since the date of the financial statements delivered pursuant to Section 5.1(e) above that has had or would be likely to have a Material Adverse Effect.

(h) Termination of Existing Credit Agreement. Receipt by the Lender of evidence that all obligations under the Existing Credit Agreement have been paid in full and all commitments thereunder terminated.

(i) Litigation. Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2014, in the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2015 and in any current report on Form 8-K filed by the Borrower between December 31, 2014 and the Closing Date, there shall not exist any action, suit, investigation or proceeding, nor shall any action, suit or investigation be pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority that materially adversely affects the Borrower or any transaction contemplated hereby or the ability of the Borrower to perform its obligations under the Credit Documents.

(j) Other. Receipt by the Lender of such other documents, instruments, agreements or information as reasonably requested by the Lender.

## **5.2 Conditions to Loans/Letters of Credit.**



In addition to the conditions precedent stated elsewhere herein, the Lender shall not be obligated to make any Revolving Loans hereunder or issue Letters of Credit hereunder unless:

(a) Request. The Borrower shall have timely delivered a duly executed and completed Notice of Borrowing of Revolving Loans or Letter of Credit Application, as applicable, in conformance with all the terms and conditions of this Credit Agreement;

(b) Representations and Warranties. The representations and warranties made by the Borrower in the Credit Documents are true and correct in all material respects at and as if made as of the date of the funding of the requested Revolving Loans; provided, that this Section 5.2(b) shall not apply to the representations set forth in Sections 6.6, 6.8 and 6.9; and

(c) No Default. On the date of the funding of the requested Revolving Loans, no Default or Event of Default has occurred and is continuing or would be caused by making the requested Revolving Loans, including, without limitation, the restrictions on (i) the amount of Revolving Loans that may be outstanding as set forth in Sections 2.1 and 2.2 and (ii) the use of proceeds set forth in Section 7.9.

The delivery of each Notice of Borrowing of Revolving Loans or Letter of Credit Application, as applicable, shall constitute a representation and warranty by the Borrower of the correctness of the matters specified in subsections (b) and (c) above.

## **SECTION 6.**

### **REPRESENTATIONS AND WARRANTIES**

The Borrower hereby represents and warrants to the Lender that:

#### **6.1 Organization and Good Standing.**

The Borrower and each Significant Subsidiary (a) is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (b) is duly qualified and in good standing as a foreign corporation authorized to do business in every jurisdiction where the failure to so qualify would have a Material Adverse Effect and (c) has the requisite corporate power and authority to own its properties and to carry on its business as now conducted and as proposed to be conducted.

#### **6.2 Due Authorization.**

The Borrower (a) has the requisite corporate power and authority to execute, deliver and perform this Credit Agreement and the other Credit Documents and to incur the obligations herein and therein provided for and (b) is duly authorized to, and has been authorized by all necessary corporate action, to execute, deliver and perform this Credit Agreement and the other Credit Documents.

#### **6.3 No Conflicts.**

Neither the execution and delivery of the Credit Documents, nor the consummation of the transactions contemplated therein, nor performance of and compliance with the terms and provisions thereof by the Borrower will (a) violate or conflict with any provision of its certificate or articles of incorporation or bylaws, (b) violate, contravene or materially conflict with any law, regulation (including without limitation, Regulation D, U or X), order, writ, judgment, injunction, decree or permit applicable

to it, (c) violate, contravene or materially conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which could have a Material Adverse Effect or (d) result in or require the creation of any Lien upon or with respect to its properties.

#### **6.4 Consents.**

No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Credit Agreement or any of the other Credit Documents that has not been obtained, except for an order or orders of the FPSC and/or the Federal Energy Regulatory Commission, which order or orders will be obtained (if required) prior to, and will be in effect on, the date of any Revolving Loans hereunder.

#### **6.5 Enforceable Obligations.**

This Credit Agreement and the other Credit Documents have been duly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

#### **6.6 Financial Condition.**

The financial statements provided to the Lender as described in Section 5.1(e): (a) fairly present the financial condition and operations of the Borrower as of the date thereof and (b) were prepared in accordance with GAAP.

#### **6.7 No Default.**

No Default or Event of Default presently exists.

#### **6.8 Indebtedness and Off Balance Sheet Indebtedness.**

As of the Closing Date, the Borrower and its Subsidiaries have no Indebtedness except as disclosed in the financial statements referenced in Section 5.1(e) and as otherwise incurred in the ordinary course. Set forth on the Borrower's Annual Report on Form 10-K for the year ended December 31, 2014 and the Borrower's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 is a specific description of all material Off Balance Sheet Indebtedness of the Borrower and its Subsidiaries as of the periods covered thereby.

#### **6.9 Litigation.**

Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2014, in the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2015 and in any current report on Form 8-K filed by the Borrower between December 31, 2014 and the Closing Date, there are no actions, suits or legal, equitable, arbitration or administrative proceedings, pending or, to the knowledge of the Borrower, threatened against the Borrower or a Significant Subsidiary, in which there is a reasonable possibility of an adverse decision which has had or would be reasonably expected to have a Material Adverse Effect.

#### **6.10 [Reserved]**

#### **6.11 Taxes.**

The Borrower has filed, or caused to be filed, all tax returns (federal, state, local and foreign) required to be filed and paid all amounts of taxes shown thereon to be due (including interest and penalties) and has paid all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes or returns (a) which are not yet delinquent, (b) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP or (c) which are not, either individually or in the aggregate, considered material. The Borrower is not aware of any proposed material tax assessments against it.

#### **6.12 Compliance with Law.**

The Borrower is in compliance with all laws, rules, regulations, orders and decrees applicable to it, or to its properties, unless (a) such failure to comply would not have a Material Adverse Effect, or (b) the necessity of compliance therewith is being contested in good faith and by proper proceedings.

#### **6.13 ERISA.**

There have been no ERISA Events that are continuing and either singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower each Pension Plan has been administered with the applicable provisions of ERISA and the Code, and there are no pending, or to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by a Governmental Authority, with respect to any Pension Plan (other than claims for benefits and funding obligations in the ordinary course and PBGC premiums due but not delinquent), except where such non-compliance, claim, lawsuit or action either singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No termination of a Pension Plan has occurred, and no Lien in favor of the PBGC or a Pension Plan has arisen, which would reasonably be expected to have a Material Adverse Effect. The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by an amount that could reasonably be expected to have a Material Adverse Effect. The Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules with respect to each Pension Plan except where the failure to meet such requirements would not reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any ERISA Affiliate has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

#### **6.14 Use of Proceeds; Margin Stock.**

The proceeds of the Revolving Loans and the issuance of any Letter of Credit hereunder (a) will be used solely for the purposes specified in Section 7.9 and (b) will not be used in a manner that would cause a violation of Regulation U or Regulation X.

#### **6.15 Investment Company Act.**

The Borrower is not an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended, or controlled by such a company.



#### **6.16 Solvency.**

The Borrower is solvent. For purposes of the preceding sentence, “solvent” means (a) the fair saleable value (on a going concern basis) of the Borrower’s assets exceed its liabilities, contingent or otherwise, fairly valued, (b) the Borrower will be able to pay its debts as they become due and (c) upon paying its debts as they become due, the Borrower will not be left with unreasonably small capital as is necessary to satisfy all of its current and reasonably anticipated obligations.

#### **6.17 OFAC.**

Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower and its Subsidiaries, any director, officer or employee thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s List of Specially Designated Nationals or HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List or (iii) located, organized or resident in a Designated Jurisdiction.

#### **6.18 Anti-Corruption Laws.**

To the extent applicable, the Borrower and each of its Subsidiaries conducts its businesses in compliance, in all material respects, with the United States Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010 and maintains policies and procedures designed to promote and achieve compliance with such laws.

### **SECTION 7.**

#### **AFFIRMATIVE COVENANTS**

The Borrower hereby covenants and agrees that so long as this Credit Agreement is in effect and any Letter of Credit shall remain outstanding and until the Revolving Loans, together with interest, fees and other obligations hereunder (other than contingent indemnification obligations not yet due and payable), have been paid in full and the Revolving Loan Commitment hereunder shall have terminated:

#### **7.1 Information Covenants.**

The Borrower will furnish, or cause to be furnished, to the Lender:

(a) Annual Financial Statements. As soon as available, and in any event within 120 days after the close of each fiscal year of the Borrower, a consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of the end of such fiscal year, together with related statements of operations and retained earnings and of cash flows for such fiscal year, setting forth in comparative form figures for the preceding fiscal year, all such financial information described above to be in reasonable form and detail and audited by independent certified public accountants of recognized national standing reasonably acceptable to the Lender and whose opinion shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur) and shall not be limited as to the scope of the audit or qualified as to going concern. To the extent that the information set forth in this Section 7.1(a) is included in the Borrower’s annual report on Form 10-K as filed with the Securities and Exchange Commission, such information shall be deemed delivered for purposes hereof.

(b) Quarterly Financial Statements. As soon as available, and in any event within 55 days after the close of each fiscal quarter of the Borrower (other than the fourth fiscal quarter) a consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of the end of such fiscal quarter, together with related statements of operations and retained earnings and of cash flows for such fiscal quarter in each case setting forth in comparative form figures for the corresponding period of the preceding fiscal year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Lender, and accompanied by a certificate of the chief financial officer of the Borrower to the effect that such quarterly financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments. To the extent that the information set forth in this Section 7.1(b) is included in the Borrower's quarterly report on Form 10-Q as filed with the Securities and Exchange Commission, such information shall be deemed delivered for purposes hereof.

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(a) and 7.1(b) above, a certificate of the chief financial officer, treasurer or any assistant treasurer of the Borrower, substantially in the form of Exhibit 7.1(c), (i) demonstrating compliance with the financial covenant contained in Section 7.11 by calculation thereof as of the end of each such fiscal period and (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto.

(d) Notices. Upon a Responsible Officer of the Borrower obtaining knowledge thereof, the Borrower will give written notice to the Lender as soon as administratively practicable of (i) the occurrence of an event or condition consisting of a Default or Event of Default, specifying the nature and existence thereof and what action the Borrower proposes to take with respect thereto, and (ii) the occurrence of any of the following with respect to the Borrower: (A) the pendency or commencement of any litigation, arbitral or governmental proceeding against the Borrower which, if adversely determined, is likely to have a Material Adverse Effect, (B) the institution of any proceedings against the Borrower with respect to, or the receipt of notice by the Borrower of potential liability or responsibility for, violation or alleged violation of any federal, state or local law, rule or regulation, the violation of which would likely have a Material Adverse Effect or (C) any notice concerning the imposition of any withdrawal liability by a Multiemployer Plan against the Borrower or any of its ERISA Affiliates or the termination of any Pension Plan in a distress termination.

(e) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Borrower as the Lender may reasonably request.

Documents required to be delivered pursuant to Section 7.1 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which the Lender has access; provided that: the Borrower shall deliver paper copies of such documents to the Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Lender.

## **7.2 Preservation of Existence and Franchises.**

The Borrower will, except as permitted by Section 8.2, do all things necessary to preserve and keep in full force and effect its existence, rights, franchises and authority.

### **7.3 Books and Records.**

The Borrower will keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

### **7.4 Compliance with Law.**

The Borrower will comply with all laws, rules, regulations, orders and decrees, and all restrictions imposed by all Governmental Authorities, applicable to it and its property (a) if noncompliance with any such law, rule, regulation, order or restriction would be reasonably expected to have a Material Adverse Effect or (b) unless the necessity of compliance therewith is being contested in good faith and by proper proceedings.

### **7.5 Payment of Taxes.**

The Borrower will pay and discharge all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent; provided, however, that the Borrower shall not be required to pay (a) any such tax, assessment, charge, levy, or claim which is being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been established in accordance with GAAP or (b) any such taxes which are not, either individually or in the aggregate, considered material.

### **7.6 Insurance.**

The Borrower will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice.

### **7.7 Performance of Obligations.**

The Borrower will perform in all material respects all of its obligations under the terms of all material agreements to which it is a party or by which it is bound (other than agreements, indentures, mortgages, security agreements or other instruments relating to Indebtedness) unless (i) Borrower's nonperformance of any such agreement would not reasonably be expected to have a Material Adverse Effect or (ii) the necessity of performance thereof is being contested in good faith and by proper proceedings.

### **7.8 ERISA.**

The Borrower shall, and shall, to the extent practicable, cause each of its ERISA Affiliates to: (a) maintain each Pension Plan in compliance with the applicable provisions of ERISA, the Code and other applicable federal or state law; and (b) make all required contributions to any Pension Plan subject to Section 412 or Section 430 of the Code and all contributions required of the Borrower and its ERISA Affiliates to any Multiemployer Plan subject to Section 431 of the Code; except in each such instance in clause (a) or (b) where the failure to do so, either singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.



### **7.9 Use of Proceeds.**

The proceeds of the Revolving Loans and Letters of Credit may be used solely (a) to provide credit support for the Borrower's commercial paper program (including SCFC Notes), (b) for working capital for the Borrower, (c) to provide credit support for tax exempt pollution control bond issuances and (d) for other general corporate purposes, including, without limitation, acquisitions.

### **7.10 Audits/Inspections.**

Upon reasonable notice and during normal business hours, the Borrower will permit representatives appointed by the Lender, including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect the Borrower's property, including its books and records, its accounts receivable and inventory, the Borrower's facilities and its other business assets, and to make photocopies or photographs thereof and to write down and record any information such representative obtains and shall permit the Lender or its representatives to investigate and verify the accuracy of information provided to the Lender and to discuss all such matters with the officers, employees and representatives of the Borrower. So long as there is not a Default or Event of Default or unless Borrower otherwise consents, such visits and inspections shall be limited to once per calendar year.

### **7.11 Indebtedness to Capitalization.**

The ratio of (a) Indebtedness of the Borrower and its consolidated Subsidiaries to (b) Capitalization shall at all times be less than or equal to .65 to 1.0.

## **SECTION 8.**

### **NEGATIVE COVENANTS**

The Borrower hereby covenants and agrees that so long as this Credit Agreement is in effect and any Letter of Credit remains outstanding and until the Revolving Loans, together with interest, fees and other obligations hereunder (other than contingent indemnification obligations not yet due and payable), have been paid in full and the Revolving Loan Commitment hereunder shall have terminated:

#### **8.1 Nature of Business.**

The Borrower will not alter the character of its business from that conducted as of the Closing Date.

#### **8.2 Consolidation and Merger.**

The Borrower will not enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); provided that notwithstanding the foregoing provisions of this Section 8.2, the following actions may be taken if after giving effect thereto no Default or Event of Default exists:

- (a) a Subsidiary of the Borrower may be merged or consolidated with or into the Borrower; provided that the Borrower shall be the continuing or surviving corporation; and
- (b) the Borrower may merge or consolidate with any other Person (other than one of its Subsidiaries) if either (i) the Borrower shall be the continuing or surviving corporation or (ii) the Borrower shall not be the continuing or surviving corporation and the corporation so

continuing or surviving (A) is a corporation organized and duly existing under the law of any state of the United States, (B) has (1) a long term, senior, unsecured, non-credit enhanced debt rating of BBB- or better from S&P and Baa3 or better from Moody's or (2) a commercial paper rating of A-2 or better from S&P and P-2 or better from Moody's and (C) executes and delivers to the Lender an instrument in form reasonably satisfactory to the Lender pursuant to which it expressly assumes the Revolving Loans and all of the other obligations of the Borrower under the Credit Documents and procures for the Lender an opinion in form reasonably satisfactory to the Lender in respect of the due authorization, execution, delivery and enforceability of such instrument and covering such other matters as the Lender may reasonably request; provided that prior to any such merger or consolidation, the Borrower shall have delivered to the Lender a certificate demonstrating that, upon giving effect to such merger or consolidation on a pro forma basis, the Borrower will be in compliance with Section 7.11.

### **8.3 Sale or Lease of Assets.**

Except as permitted by Section 8.2, the Borrower will not convey, sell, lease, transfer or otherwise dispose of in one transaction or a series of transactions, all or substantially all of its business or assets whether now owned or hereafter acquired.

### **8.4 Transactions with Affiliates.**

Except as otherwise required by law, the Borrower will not enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any of its Affiliates other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an Affiliate.

### **8.5 Fiscal Year.**

The Borrower will not change its fiscal year (a) without prior written notification to the Lender and (b) if such change would materially affect the Lender's ability to read and interpret the financial statements delivered pursuant to Section 7.1 or calculate the financial covenant in Section 7.11.

### **8.6 Liens.**

The Borrower will not contract, create, incur, assume or permit to exist any Lien with respect to any of its property or assets of any kind (whether real or personal, tangible or intangible), whether now owned or hereafter acquired, securing any Indebtedness unless the Revolving Loans hereunder are equally and ratably secured with such other Indebtedness other than the following: (a) Liens securing Borrower Obligations, (b) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (c) Liens in respect of property imposed by law arising in the ordinary course of business such as materialmen's, mechanics', warehousemen's, carrier's, landlords' and other nonconsensual statutory Liens which are not yet due and payable, which have been in existence less than 90 days or which are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (d) pledges or deposits made in the ordinary course of business to secure payment of worker's compensation insurance, unemployment insurance, pensions or social security programs, other than any Lien imposed by ERISA, (e) Liens arising from good faith deposits in connection with or to secure performance of tenders, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations

incurred in the ordinary course of business (other than obligations in respect of the payment of borrowed money), (f) Liens arising from good faith deposits in connection with or to secure performance of statutory obligations and surety and appeal bonds (unless such Lien is in connection with a judgment that has caused an Event of Default pursuant to Section 9.1(g)), (g) easements, rights-of-way, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances not, in any material respect, impairing the use of the encumbered property for its intended purposes, (h) judgment Liens that would not constitute an Event of Default, (i) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights as to deposit accounts or other funds maintained with a creditor depository institution, (j) any Lien created or arising over any property which is acquired, constructed or created by the Borrower, but only if (i) such Lien secures only principal amounts (not exceeding the cost of such acquisition, construction or creation) raised for the purposes of such acquisition, construction or creation, together with any costs, expenses, interest and fees incurred in relation thereto or a guarantee given in respect thereof, (ii) such Lien is created or arises on or before 360 days after the completion of such acquisition, construction or creation and (iii) such Lien is confined solely to the property so acquired, constructed or created and any improvements thereto, (k) any Lien on any property or assets acquired from a corporation or other entity which is merged with or into the Borrower in accordance with Section 8.2, and is not created in anticipation of any such transaction (unless such Lien is created to secure or provide for the payment of any part of the purchase price of such corporation or other entity), (l) any Lien on any property or assets existing at the time of acquisition of such property or assets by the Borrower and which is not created in anticipation of such acquisition (unless such Lien was created to secure or provide for the payment of any part of the purchase price of such property or assets), (m) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Liens referred to in the foregoing clauses (a) through (l), for amounts not exceeding the principal amount of the Indebtedness secured by the Lien so extended, renewed or replaced, provided that such extension, renewal or replacement Lien is limited to all or a part of the same property or assets that were covered by the Lien extended, renewed or replaced (plus improvements on such property or assets) and (n) Liens on property, in addition to those otherwise permitted by clauses (a) through (m) above, securing, directly or indirectly, Indebtedness which does not exceed, in the aggregate at any one time outstanding, the greater of (i) \$100,000,000.00 or (ii) ten percent (10%) of Net Tangible Assets.

#### **8.7     Sanctions.**

The Borrower shall not, directly or, to the knowledge of the Borrower, indirectly, use any Revolving Loans or the proceeds of any Revolving Loans, or lend, contribute or otherwise make available such Revolving Loans or the proceeds of any Revolving Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will, to the knowledge of the Borrower, result in a violation by any Person (including any Person participating in the transaction, whether as Lender or otherwise) of Sanctions.

#### **8.8     Anti-Corruption Laws.**

The Borrower shall not, directly or indirectly, use the proceeds of any Revolving Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977 or the UK Bribery Act 2010.

### **SECTION 9.**

#### **EVENTS OF DEFAULT**



### 9.1 Events of Default.

An Event of Default shall exist upon the occurrence of any of the following specified events (each an “Event of Default”):

(a) Payment. The Borrower shall:

(i) default in the payment when due of any principal of any of the Revolving Loans; or

(ii) default in reimbursement of the Lender for any L/C Obligations when due; or

(iii) default, and such default shall continue for five or more Business Days, in the payment when due of any interest on the Revolving Loans or of any fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith.

(b) Representations. Any representation, warranty or statement made or deemed to be made by the Borrower herein, in any of the other Credit Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made; provided, however, that if such untrue representation, warranty or statement is capable of being remedied, it shall not be an Event of Default if the Borrower remedies such untrue representation, warranty or statement within ten (10) Business Days of any Responsible Officer of the Borrower obtaining actual knowledge thereof.

(c) Covenants. The Borrower shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.2, 7.3, 7.4, 7.9, 7.11 or 8.1 through 8.8, inclusive; or

(ii) default in the due performance or observance by it of any term, covenant or agreement contained in Section 7.1(a), (b), (c) or (d) and such default shall continue unremedied for a period of ten Business Days after the earlier of an officer of the Borrower becoming aware of such default or written notice thereof given by the Lender; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b), (c)(i) or (c)(ii) of this Section 9.1) contained in this Credit Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 days after the earlier of an officer of the Borrower becoming aware of such default or written notice thereof given by the Lender.

(d) Credit Documents. Any Credit Document shall fail to be in full force and effect or to give the Lender the rights, powers and privileges purported to be created thereby.

(e) Bankruptcy, etc. The occurrence of any of the following with respect to the Borrower or a Significant Subsidiary: (i) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower or a Significant

Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or a Significant Subsidiary or for any substantial part of its property or ordering the winding up or liquidation of its affairs; or (ii) an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect is commenced against the Borrower or a Significant Subsidiary and such petition remains unstayed and in effect for a period of 60 consecutive days; or (iii) the Borrower or a Significant Subsidiary shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or any substantial part of its property or make any general assignment for the benefit of creditors; or (iv) the Borrower or a Significant Subsidiary shall admit in writing its inability to pay its debts generally as they become due or any action shall be taken by such Person in furtherance of any of the aforesaid purposes.

(f) Defaults under Other Agreements. With respect to any Indebtedness (other than the Indebtedness under this Credit Agreement) of the Borrower or a Significant Subsidiary in a principal amount in excess of \$100,000,000, (i) the Borrower or such Significant Subsidiary shall (A) default in any payment (interest or principal) (beyond the applicable grace period with respect thereto, if any) with respect to any such Indebtedness, or (B) default (after giving effect to any applicable grace period) in the observance or performance of any covenant or agreement relating to such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default pursuant to this clause (B) or other event or condition is to cause, any such Indebtedness to become immediately due and payable; or (ii) any such Indebtedness shall be declared due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or (iii) any such Indebtedness matures and remains unpaid.

(g) Judgments. One or more judgments, orders, or decrees shall be entered against the Borrower or a Significant Subsidiary involving a liability of \$100,000,000 or more, in the aggregate, (to the extent not paid or covered by insurance provided by a carrier who has acknowledged coverage) and such judgments, orders or decrees shall continue unsatisfied, undischarged and unstayed for a period of at least 30 days after the last day on which such judgment, order or decree becomes final and unappealable and, where applicable, with the status of a judicial lien.

(h) ERISA. (i) An ERISA Event occurs which is continuing and has resulted or would reasonably be expected to result in liability of the Borrower or any ERISA Affiliate in an aggregate amount in excess of \$100,000,000, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$100,000,000; or

(i) Change of Control. The occurrence of any Change of Control.

## **9.2 Acceleration; Remedies.**

Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by the Lender or cured to the satisfaction of the Lender, the Lender may, by written notice to the Borrower, take any of the following actions without prejudice to the rights

of the Lender to enforce its claims against the Borrower, except as otherwise specifically provided for herein:

(i) Termination of Revolving Loan Commitment. Declare the Revolving Loan Commitment and the obligation of the Lender to make L/C Credit Extensions terminated whereupon the Revolving Loan Commitment and the obligation of the Lender to make L/C Credit Extensions shall be immediately terminated.

(ii) Acceleration of Revolving Loans. Declare the unpaid principal of and any accrued interest in respect of all Revolving Loans, all L/C Obligations and any and all other indebtedness or obligations of any and every kind owing by the Borrower to the Lender hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

(iii) Cash Collateralize L/C Obligations. Direct the Borrower to Cash Collateralize (and the Borrower agrees that upon receipt of such notice, or upon the occurrence of an Event of Default under Section 9.1(e), it will immediately Cash Collateralize) all outstanding L/C Obligations.

(iv) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Credit Documents, including, without limitation, all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(e) shall occur, then (a) the Revolving Loan Commitment shall automatically terminate, (b) all Revolving Loans, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Lender hereunder shall immediately become due and payable and (c) the Borrower shall Cash Collateralize the L/C Obligations, without the giving of any notice or other action by the Lender.

### **9.3 Allocation of Payments after Event of Default.**

Notwithstanding any other provisions of this Credit Agreement, after the exercise of any remedies by the Lender pursuant to Section 9.2 (or after the Revolving Loan Commitment shall automatically terminate and the Revolving Loans (with accrued interest thereon) and all other amounts under the Credit Documents shall automatically become due and payable in accordance with the terms of such Section), all amounts collected or received by the Lender on account of amounts outstanding under any of the Credit Documents shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Lender in connection with enforcing the rights of the Lender under the Credit Documents;

SECOND, to payment of any fees (other than Letter of Credit Fees) owed to the Lender;

THIRD, to the payment of all accrued Letter of Credit Fees and interest payable on the Revolving Loans, L/C Borrowings and other Borrower Obligations to the Lender hereunder;

FOURTH, to the payment of the outstanding principal amount of the Revolving Loans, L/C Borrowings and all other Borrower Obligations which shall have become due and payable under the Credit Documents;



FIFTH, to the Lender, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

SIXTH, the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category.

Subject to Section 2.2(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Borrower Obligations, if any, in the order set forth above.

## **SECTION 10.**

### **[RESERVED]**

## **SECTION 11.**

### **MISCELLANEOUS**

#### **11.1 Notices and other Communications; Facsimile Copies.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or electronic communication, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.1.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Lender. The Borrower and the Lender hereby agree to accept notices and other communications to it hereunder by electronic communications pursuant to the procedures in this Section 11.1.

Unless the parties agree otherwise, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient,

and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) Change of Address, Etc. Each of the Borrower and the Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto.

(c) Reliance by Lender. The Lender shall be entitled to rely and act upon any notices given by the Borrower even if such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein. All telephonic notices to and other communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

### **11.2 Right of Set-Off.**

In addition to any rights now or hereafter granted under applicable Law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default and the commencement of remedies described in Section 9.2, the Lender is authorized at any time and from time to time, without presentment, demand, protest or other notice of any kind (all of which rights being hereby expressly waived), to set-off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by the Lender (including, without limitation branches, agencies or Affiliates of the Lender wherever located) to or for the credit or the account of the Borrower against obligations and liabilities of the Borrower to the Lender hereunder, under any Note, the other Credit Documents or otherwise, irrespective of whether the Lender shall have made any demand hereunder and although such obligations, liabilities or claims, or any of them, may be contingent or unmatured, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of the Lender subsequent thereto. The Borrower hereby agrees that any Participation Purchaser may exercise all rights of set-off with respect to its participation interest as fully as if such Person were a Lender hereunder.

### **11.3 Benefit of Agreement.**

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that, other than as permitted by Section 8.2, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender.

(b) The Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participation Purchaser") in all or a portion of the Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Revolving Loan Commitment and/or the Revolving Loans (including the Lender's participations in L/C Obligations) owing to it); provided that (i) the Lender's obligations under this Credit Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the Borrower for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Credit Agreement. Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit

Agreement; provided that such agreement or instrument may provide that the Lender will not, without the consent of the Participation Purchaser, agree to any amendment, waiver or other modification described in Section 11.6 that directly affects such Participation Purchaser. Subject to subsection (c) of this Section, the Borrower agrees that each Participation Purchaser shall be entitled to the benefits of Sections 4.1 through 4.4 to the same extent as if it were a Lender. To the extent permitted by law, each Participation Purchaser also shall be entitled to the benefits of Section 11.2 as though it were a Lender, provided such Participation Purchaser agrees to be subject to Section 3.8 as though it were a Lender.

(c) A Participation Purchaser shall not be entitled to receive any greater payment under Section 4.2 or 4.4 than the Lender would have been entitled to receive with respect to the participation sold to such Participation Purchaser, unless the sale of the participation to such Participation Purchaser is made with the Borrower's prior written consent. A Participation Purchaser that would be a "foreign corporation, partnership or trust" within the meaning of the Code if it were the Lender shall not be entitled to the benefits of Section 4.4 unless the Borrower is notified of the participation sold to such Participation Purchaser and such Participation Purchaser agrees, for the benefit of the Borrower, to comply with Section 4.4(d) as though it were a Lender.

(d) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under the Note, if any) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

#### **11.4 No Waiver; Remedies Cumulative.**

No failure or delay on the part of the Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower and the Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Lender would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Lender to any other or further action in any circumstances without notice or demand.

#### **11.5 Payment of Expenses, etc.**

The Borrower agrees to: (i) pay all reasonable out-of-pocket costs and expenses of (A) the Lender in connection with the negotiation, preparation, execution, delivery and administration of this Credit Agreement and the other Credit Documents and the documents and instruments referred to therein (including, without limitation, the reasonable fees and expenses of a single special counsel to the Lender) and any amendment, waiver, consent or assignment relating hereto and thereto including, but not limited to, any such amendments, waivers or consents resulting from or related to any work-out, renegotiation or restructure relating to the performance by the Borrower under this Credit Agreement, (B) the Lender in connection with enforcement of the Credit Documents and the documents and instruments referred to therein and any reasonable expenses incurred in connection with any work-out, renegotiation or restructure relating to the performance by the Borrower under this Credit Agreement (including, without limitation, in connection with any such enforcement, the reasonable fees and disbursements of counsel for



the Lender) and (C) the Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (ii) indemnify the Lender and its Affiliates and its and their respective directors, officers, employees, counsel, agents, representatives and attorneys-in-fact from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not the Lender is a party thereto) related to the entering into and/or performance of any Credit Document or the use of proceeds of any Revolving Loans (including other extensions of credit) or Letter of Credit hereunder or the consummation of any other transactions contemplated in any Credit Document (including any refusal by the Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding; provided that the Borrower shall not be responsible for any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of gross negligence or willful misconduct on the part of the Person to be indemnified, in each case as found by a final, non-appealable judgment of a court of competent jurisdiction; and provided further that in no event shall the Borrower have any liability with respect to the settlement or compromise of any claim or proceeding effected without its prior written consent nor shall the Borrower be liable for the fees and disbursements of more than one firm of attorneys in connection with the same matter in the same jurisdiction for all Persons indemnified. The agreements in this Section 11.5 shall survive the repayment of the Borrower Obligations and the termination of the Revolving Loan Commitment.

#### **11.6 Amendments, Waivers and Consents.**

Neither this Credit Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing and signed by the Lender and the Borrower.

#### **11.7 Counterparts; Telecopy.**

This Credit Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Credit Agreement to produce or account for more than one such counterpart. Delivery of executed counterparts by telecopy shall be as effective as an original and shall constitute a representation that an original will be delivered.

#### **11.8 Headings.**

The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

#### **11.9 [Reserved].**

#### **11.10 Survival of Indemnification and Representations and Warranties.**

All indemnities set forth herein and all representations and warranties made herein shall survive the execution and delivery of this Credit Agreement, the making of the Revolving Loans, and the repayment of the Revolving Loans and other obligations and the termination of the Revolving Loan Commitment hereunder.

#### **11.11 Governing Law; Jurisdiction.**

(a) THIS CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE PARTIES HERETO CONSENT TO SUCH GOVERNANCE, CONSTRUCTION AND INTERPRETATION UNDER THE LAWS OF THE STATE OF NEW YORK.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER OR ANY RELATED PARTY OF THE LENDER IN ANY WAY RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING IN THIS CREDIT AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN THE COURTS OF ANY JURISDICTION.

**11.12 Waiver of Jury Trial; Waiver of Consequential Damages.**

EACH OF THE PARTIES TO THIS CREDIT AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT, ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. The Borrower agrees that the Lender, any of its Affiliates and its and their respective officers, directors, employees, representatives, agents and attorneys-in-fact (each, an "Indemnified Party") shall not have any liability for any indirect or consequential damages arising out of, related to or in connection with the Credit Documents except to the extent such damages were caused by reason of gross negligence or willful misconduct on the part of such Indemnified Party.

**11.13 Time.**

All references to time herein shall be references to Eastern Standard Time or Eastern Daylight time, as the case may be, unless specified otherwise.

**11.14 Severability.**

If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

#### **11.15 Entirety.**

This Credit Agreement together with the other Credit Documents represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

#### **11.16 Confidentiality.**

The Lender agrees that it will use its reasonable best efforts to keep confidential and to cause any representative designated under Section 7.10 to keep confidential any non-public information from time to time supplied to it under or in connection with any Credit Document including, without limitation, any such information furnished to the Lender prior to or in connection with its entry into any Credit Document (the “Information”); provided, however, that nothing herein shall affect the disclosure of any such Information to (a) the extent the Lender in good faith believes such disclosure is required by statute, rule, regulation or judicial process or applicable Law or by subpoena or similar legal process, (b) the extent requested by any regulatory authority having jurisdiction over the Lender or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners) which has been notified of the confidential nature of such Information, (c) counsel for the Lender or to its accountants, (d) bank examiners or auditors or comparable Persons, (e) any Affiliate of the Lender, (f) (i) any participant or any direct contractual counterparties to any swap or derivative transaction relating to Borrower and its obligations or (ii) any potential participant of all or any portion of the Lender’s rights under this Credit Agreement, in each case who is notified of the confidential nature of the Information and agrees to be bound by this provision or provisions reasonably comparable hereto, (g) any other Person in connection with any litigation to which the Lender is a party, (h) to any credit insurance provider relating to the Borrower and its obligations, (i) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Credit Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder or (j) with the consent of the Borrower; and provided further that the Lender shall have no obligation under this Section 11.16 to the extent any such Information becomes available on a non-confidential basis from a source other than the Borrower or its Subsidiaries or that any Information becomes publicly available other than by a breach of this Section 11.16. The Lender agrees it will use all confidential Information exclusively for the purpose of evaluating, monitoring, selling, protecting or enforcing its Revolving Loans and other rights under the Credit Documents.

#### **11.17 Binding Effect.**

(a) This Credit Agreement shall become effective when it shall have been executed by the Borrower and the Lender and thereafter this Credit Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender, together with their respective successors and assigns. Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the indemnified parties hereunder) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.



(b) This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Revolving Loans, interest, fees and other Borrower Obligations have been paid in full and the Revolving Loan Commitment and Letters of Credit have been terminated. Upon termination, the Borrower shall have no further obligations (other than the indemnification provisions that survive) under the Credit Documents; provided that should any payment, in whole or in part, of the Borrower Obligations be rescinded or otherwise required to be restored or returned by the Lender, whether as a result of any proceedings in bankruptcy or pursuant to court order, then the Credit Documents shall automatically be reinstated and all amounts required to be restored or returned and all costs and expenses incurred by the Lender in connection therewith shall be deemed included as part of the Borrower Obligations.

#### **11.18 USA Patriot Act Notice.**

The Lender, to the extent that it is subject to the Act (as hereinafter defined), hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower and each of its Subsidiaries shall provide such information and take such actions as are reasonably requested by the Lender in order to assist the Lender in maintaining compliance with the Act.

#### **11.19 No Fiduciary Responsibility.**

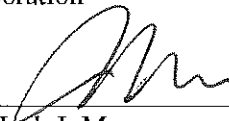
In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the services regarding this Credit Agreement provided by the Lender are arm’s-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lender on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) the Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its respective Affiliates, or any other Person and (B) the Lender has no obligation to the Borrower or any of its respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (iii) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and the Lender has no obligation to disclose any of such interests to the Borrower and its respective Affiliates. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**[the remainder of this page intentionally left blank]**

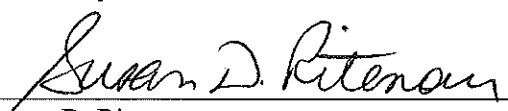
Each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

**BORROWER:**

**GULF POWER COMPANY**, a Florida  
corporation


By:   
Josh J. Mason  
Assistant Treasurer

Attested to by:

By:   
Susan D. Ritenour  
Secretary and Treasurer

**LENDER:**

**BANK OF AMERICA, N.A.**, in its capacity as  
Lender

By: 

Name: Patrick Engel

Title: Director



SCHEDULE 3.5  
PLACE AND MANNER OF PAYMENTS

All payments of principal, interest, fees, expenses and other amounts to be made by Borrower under this Credit Agreement shall be made to the Lender as follows:

Lender's Principal Office to Receive Funds:

Bank of America, N.A.  
Bank of America Plaza  
901 Main St.  
TX1-492-14-14  
Dallas, Texas 75202-3714

Wiring Instructions:

Bank of America, N.A.  
New York, NY  
ABA# [REDACTED]  
Account No.: [REDACTED]  
Account Name: Wire Clearing Acct for Syn Loans - LIQ  
Ref: Gulf Power Company

SCHEDULE 11.1  
NOTICES

**BORROWER:**

**GULF POWER COMPANY:**

Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0786  
Attention: Susan D. Ritenour  
Tel: (850) 444-6231  
Fax: (850) 444-6026  
Email: sdriteno@southernco.com

*with a copy to:*

Gulf Power Company  
30 Ivan Allen Jr. Boulevard, NW  
BIN SC1407  
Atlanta, Georgia 30308  
Attention: Dave Symons  
Tel: (404) 506-0782  
Fax: (404) 506--717  
Email: dsymons@southernco.com

**LENDER:**

Bank of America, N.A.  
Bank of America Plaza  
901 Main St.  
TX1-492-14-14  
Dallas, Texas 75202-3714  
Attention: Keli Torres  
Tel: (214) 209-1864  
Facsimile: (214) 290-8372  
Email: kelitorres@baml.com

## FORM OF NOTICE OF BORROWING OF REVOLVING LOAN

TO: Bank of America, N.A., as Lender

RE: Amended and Restated Credit Agreement dated as of November 6, 2015 between Gulf Power Company (the "Borrower") and Bank of America, N.A., as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

---

1. This Notice of Borrowing is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.
2. Please be advised that the Borrower is requesting Revolving Loans in the amount of \$\_\_\_\_\_ to be funded on \_\_\_\_\_, 20\_\_ at the interest rate option set forth in paragraph 3 below.

Subsequent to the funding of the requested Revolving Loans, the aggregate amount of Revolving Loans outstanding will be \$\_\_\_\_\_ which is less than or equal to the Revolving Loan Commitment.

3. The interest rate option applicable to the requested Revolving Loans shall be:
  - a. \_\_\_\_\_ the Adjusted Base Rate
  - b. \_\_\_\_\_ the Adjusted Eurodollar Rate for an Interest Period of:
    - \_\_\_\_\_ one month
    - \_\_\_\_\_ two months
    - \_\_\_\_\_ three months
    - \_\_\_\_\_ six months

4. Unless notification to the contrary is received by the Lender prior to the date on which funds are to be advanced, as of the date on which funds are to be advanced, all representations and warranties required to be made pursuant to the Credit Agreement and the other Credit Documents will be true and correct in all material respects.
5. Unless notification to the contrary is received by the Lender prior to the date on which funds are to be advanced, as of the date on which funds are to be advanced, no Default or Event of Default will have occurred and be continuing or will be caused by this Notice of Borrowing.
6. Please credit the following account with the Revolving Loans requested pursuant to this Notice of Borrowing:

Bank: [                      ]



[                    ]  
ABA #: [                    ]  
Acct #: [                    ]  
Account Name: [                    ]

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## FORM OF NOTICE OF CONTINUATION/CONVERSION

TO: Bank of America, N.A., as Lender

RE: Amended and Restated Credit Agreement dated as of November 6, 2015 between Gulf Power Company (the "Borrower") and Bank of America, N.A., as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

- 
1. This Notice of Continuation/Conversion is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.
  2. Please be advised that the Borrower is requesting that a portion of the current outstanding Revolving Loans in the amount of \$\_\_\_\_\_ currently accruing interest at \_\_\_\_\_ be continued or converted as of \_\_\_\_\_, 20\_\_ at the interest rate option set forth in paragraph 3 below.
  3. The interest rate option applicable to the continuation or conversion of all or part of the existing Revolving Loans (as set forth above) shall be:
    - a. \_\_\_\_\_ the Adjusted Base Rate
    - b. \_\_\_\_\_ the Adjusted Eurodollar Rate for an Interest Period of:
      - \_\_\_\_\_ one month
      - \_\_\_\_\_ two months
      - \_\_\_\_\_ three months
      - \_\_\_\_\_ six months
  4. Unless notification to the contrary is received by the Lender prior to the date on which Revolving Loans are to be continued or converted, as of the date on which Revolving Loans are to be continued or converted, all representations and warranties required to be made pursuant to the Credit Agreement and the other Credit Documents will be true and correct in all material respects.
  5. Unless notification to the contrary is received by the Lender prior to the date on which Revolving Loans are to be continued or converted, as of the date on which Revolving Loans are to be continued or converted, no Default or Event of Default will have occurred and be continuing or will be caused by this Notice of Continuation/Conversion.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



FORM OF  
NOTE

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, GULF POWER COMPANY, a Florida corporation (the "Borrower"), hereby promises to pay to the order of Bank of America, N.A. (the "Lender"), at the Lender's office as set forth in that certain Amended and Restated Credit Agreement dated as of November 6, 2015 between the Borrower and the Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement") (or at such other place or places as the holder of this Note may designate), the aggregate amount of all advances made by the Lender as Revolving Loans pursuant to the Lender's Commitment (and not otherwise repaid), in lawful money and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each Revolving Loan made by the Lender, at such office, in like money and funds, for the period commencing on the date of each Revolving Loan until each Revolving Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Note is the Note referred to in the Credit Agreement and evidences Revolving Loans made by the Lender thereunder. The Lender shall be entitled to the benefits of the Credit Agreement. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement and the terms and conditions of the Credit Agreement are expressly incorporated herein and made a part hereof.

The Credit Agreement provides for the acceleration of the maturity of the Revolving Loans evidenced by this Note upon the occurrence of certain events (and for payment of collection costs in connection therewith) and for prepayments of Revolving Loans upon the terms and conditions specified therein. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to the principal and interest, all costs of collection, including reasonable attorney fees.

This Note may not be assigned by the Lender to any other Person.

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed as of the date first above written.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attested to by:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## FORM OF COMPLIANCE CERTIFICATE

TO: Bank of America, N.A., as Lender

RE: Amended and Restated Credit Agreement dated as of November 6, 2015 between Gulf Power Company (the "Borrower") and Bank of America, N.A., as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

Pursuant to the terms of the Credit Agreement, I, \_\_\_\_\_, [Chief Financial Officer/ Treasurer/ Assistant Treasurer] of Gulf Power Company, hereby certify that, as of the fiscal quarter ending \_\_\_\_\_, 20\_\_, the statements and calculations below are accurate and complete in all respects (all capitalized terms used below shall have the meanings set forth in the Credit Agreement):

1. Compliance with Section 7.11:  
Ratio of Indebtedness to Capitalization

- |    |   |               |
|----|---|---------------|
| a. | Indebtedness                            | \$ _____      |
| b. | Capitalization                          | \$ _____      |
| c. | Ratio of Indebtedness to Capitalization | _____ : _____ |

Maximum Allowed: .65 : 1.0.

2. No Default or Event of Default exists except as indicated on a separate page attached hereto, together with an explanation of the action taken or proposed to be taken by the Borrower with respect thereto.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") is made effective as of November 8, 2017 (the "Effective Date"), between GULF POWER COMPANY, a Florida corporation, as borrower (the "Borrower"), and BANK OF AMERICA, N.A. (the "Lender").

### RECITALS

WHEREAS, the Borrower and the Lender entered into that certain Amended and Restated Credit Agreement, dated as of November 13, 2015 (the "Credit Agreement"), pursuant to which the Lender provides a revolving credit facility to the Borrower; and

WHEREAS, pursuant to Section 11.6 of the Credit Agreement, the Borrower and the Lender wish to amend the Credit Agreement to extend the Maturity Date;

NOW, THEREFORE, in consideration of the Recitals and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender, intending to be legally bound hereby, agree as follows:

SECTION 1. Definitions. All capitalized terms used, but not otherwise defined, herein, shall have the meanings assigned thereto in Section 1.1 of the Credit Agreement.

SECTION 2. Amendments.

(a) A new definition is added to Section 1.1 of the Credit Agreement, in the correct alphabetical order, as follows:

*"Benefit Plan Investor" means any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Part 4 of Subtitle B of Title I of ERISA, (b) a "plan" to which Section 4975 of the Code applies, or (c) any Person whose underlying assets include "plan assets" of any such "employee benefit plan" or "plan" within the meaning of 29 CFR §2510.3-101 as modified by Section 3(42) of ERISA.*

(b) The definition of "Maturity Date" in Section 1.1 of the Credit Agreement is hereby amended by deleting the words "November 13, 2018" and inserting in their place "November 18, 2020."

(c) The following sentence is added to the end of Section 6.13 of the Credit Agreement to read as follows:

*The Borrower represents and warrants that the Borrower is not a Benefit Plan Investor.*

SECTION 3. Conditions to Effectiveness. The effectiveness of this Amendment is subject to the satisfaction (or waiver by the Lender) of the following conditions:

(a) Executed Amendment. Receipt by the Lender of a duly executed counterpart of this Amendment by the Borrower.

(b) Legal Opinion. Receipt by the Lender of an opinion, or opinions, satisfactory to the Lender, addressed to the Lender from legal counsel to the Borrower.

(c) Officer's Certificate. Receipt by the Lender of a certificate of a Responsible Officer of the Borrower stating that, as of the Effective Date, (i) there exists no Default or Event of Default; (ii) all representations and warranties contained in the Credit Agreement (other than Sections 6.6, 6.8 and 6.9), this Amendment and the other Credit Documents are true and correct in all material respects; and (iii) the Borrower is in compliance with the financial covenant set forth in Section 7.11 of the Credit Agreement, as demonstrated by the covenant calculation on Schedule A attached thereto.

(d) Financial Statements. Receipt by the Lender of (i) the consolidated audited financial statements of the Borrower, dated as of December 31, 2016, including balance sheets and income and cash flow statements, in each case audited by independent public accountants of recognized standing and prepared in accordance with GAAP and (ii) the consolidated unaudited quarterly financial statements of the Borrower for the quarter ended September 30, 2017, including balance sheets and income and cash flow statements, in each case prepared in accordance with GAAP.

(e) Upfront Fee and Expenses. Payment by the Borrower to the Lender of (i) a fee equal to 0.10% multiplied by the Revolving Loan Commitment and (ii) all other reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution, delivery and administration of this Amendment (including, without limitation, the reasonable fees and expenses of counsel to the Lender).

(f) Material Adverse Effect. No event or condition shall have occurred since the date of the financial statements delivered pursuant to Section 3(d) above that has had or would be likely to have a Material Adverse Effect.

(g) Other. Receipt by the Lender of such other documents, instruments, agreements or information as reasonably requested by the Lender.

SECTION 4. No Other Amendment. The Credit Agreement, as amended by this Amendment, is and shall continue to be in full force and effect and is hereby in all respects ratified. This Amendment is not intended to effect, nor shall it be construed as, a novation. This Amendment shall be considered a Credit Document and the Credit Agreement and this Amendment shall be construed together as a single agreement. Nothing contained herein shall waive, annul, vary or affect any provision, condition, covenant or agreement contained in the Credit Agreement, except as herein amended, or affect or impair any rights, powers or remedies under the Credit Agreement as hereby amended. The Lender hereby reserves all of its rights and remedies against all parties who may be or may hereafter become secondarily liable for the repayment of the Revolving Loans. Each of the Borrower and the Lender reaffirms its obligations under the Credit Agreement and promises and agrees to perform all of the requirements, conditions, agreements and obligations under the terms of the Credit Agreement, as hereby amended. On and after the date of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended by this Amendment.

SECTION 5. Representations and Warranties. The Borrower hereby represents and warrants to the Lender as follows:

(a) No Default. No Default or Event of Default has occurred and is continuing unwaived in writing by the Lender on the date hereof or would be caused by entering into this Amendment.

(b) Due Authorization. The Borrower (i) has the requisite corporate power and authority to execute, deliver and perform this Amendment and to incur the obligations herein provided for and (ii) is duly authorized to, and has been authorized by all necessary corporate action to, execute, deliver and perform this Amendment.

(c) No Conflicts. Neither the execution and delivery of this Amendment, nor the consummation of the transactions contemplated herein, nor performance of and compliance with the terms and provisions hereof by the Borrower will (i) violate or conflict with any provision of its certificate or articles of incorporation or bylaws, (ii) violate, contravene or materially conflict with any law, regulation (including, without limitation, Regulation U or X), order, writ, judgment, injunction, decree or permit applicable to it, (iii) violate, contravene or materially conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which could have a Material Adverse Effect or (iv) result in or require the creation of any Lien upon or with respect to its properties.

(d) Consents. No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Amendment that has not been obtained.

(e) Enforceable Obligations. This Amendment has been duly executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

(f) Litigation. Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2016 and the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2017, or in any current report on Form 8-K filed by the Borrower between December 31, 2016 and the Effective Date, there are no actions, suits or legal, equitable, arbitration or administrative proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or a Significant Subsidiary, in which there is a reasonable possibility of an adverse decision which has or would be reasonably expected to have a Material Adverse Effect.

(g) Indebtedness and Off Balance Sheet Indebtedness. As of the date hereof, the Borrower and its Subsidiaries have no Indebtedness except as disclosed in the financial statements delivered pursuant to Section 3(d) above and as otherwise incurred in the ordinary course. Set forth in the Borrower's annual report on Form 10-K for the year ended December 31, 2016 and the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2017, is a specific description of all material Off Balance Sheet Indebtedness of the Borrower and its Subsidiaries as of the periods covered thereby.

SECTION 6. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Amendment to produce or account for more than one such counterpart. Delivery of executed counterparts by telecopy or electronic transmission shall be as effective as an original and shall constitute a representation that an original will be delivered.



SECTION 7. Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Amendment.

---


SECTION 8. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE PARTIES HERETO CONSENT TO SUCH GOVERNANCE, CONSTRUCTION AND INTERPRETATION UNDER THE LAWS OF THE STATE OF NEW YORK.

Gulf Power Company  
First Amendment to Credit Agreement  
with Bank of America, N.A.

Each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

**BORROWER:**

GULF POWER COMPANY, a Florida corporation

By:   
Josh J. Mason  
Assistant Treasurer

Attested to by:

By:   
Tracy G. Clark  
Assistant Secretary

Gulf Power Company  
First Amendment to Credit Agreement  
with Bank of America, N.A.

**LENDER:**

BANK OF AMERICA, N.A.

By: 

Name: Jerry Wells

Title: Director



**AMENDED AND RESTATED  
CREDIT AGREEMENT**

between

**GULF POWER COMPANY,**

as Borrower,

and

**U.S. BANK NATIONAL ASSOCIATION,**

as Lender

DATED AS OF November 13, 2015

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.....	1
<b>1.1</b> <b>Definitions</b> .....	1
<b>1.2</b> <b>Computation of Time Periods and Other Definitional Provisions</b> .....	11
<b>1.3</b> <b>Accounting Terms</b> .....	12
<b>1.4</b> <b>Letter of Credit Amounts</b> .....	13
<b>1.5</b> <b>Rounding Rates</b> .....	13
SECTION 2. LOANS .....	13
<b>2.1</b> <b>Revolving Loan Commitment</b> .....	13
<b>2.2</b> <b>Letters of Credit</b> .....	13
<b>2.3</b> <b>Extension of Maturity Date</b> .....	17
<b>2.4</b> <b>Method of Borrowing for Revolving Loans</b> .....	18
<b>2.5</b> <b>Funding of Revolving Loans</b> .....	18
<b>2.6</b> <b>Continuations and Conversions</b> .....	18
<b>2.7</b> <b>Minimum Amounts</b> .....	18
<b>2.8</b> <b>Reductions of Revolving Loan Commitment</b> .....	19
<b>2.9</b> <b>Evidence of Obligations</b> .....	19
SECTION 3. PAYMENTS .....	19
<b>3.1</b> <b>Interest</b> .....	19
<b>3.2</b> <b>Prepayments</b> .....	20
<b>3.3</b> <b>Payment in Full at Maturity</b> .....	20
<b>3.4</b> <b>Fees</b> .....	20
<b>3.5</b> <b>Place and Manner of Payments</b> .....	21
<b>3.6</b> <b>[Reserved]</b> .....	21
<b>3.7</b> <b>Computations of Interest and Fees</b> .....	21
SECTION 4. ADDITIONAL PROVISIONS REGARDING LOANS.....	22
<b>4.1</b> <b>Eurodollar Loans</b> .....	22
<b>4.2</b> <b>Capital Adequacy</b> .....	23
<b>4.3</b> <b>Compensation</b> .....	24
<b>4.4</b> <b>Taxes</b> .....	24
<b>4.5</b> <b>Mitigation</b> .....	26
SECTION 5. CONDITIONS PRECEDENT .....	26
<b>5.1</b> <b>Closing Conditions</b> .....	26
<b>5.2</b> <b>Conditions to Loans/Letters of Credit</b> .....	28
SECTION 6. REPRESENTATIONS AND WARRANTIES .....	28
<b>6.1</b> <b>Organization and Good Standing</b> .....	28
<b>6.2</b> <b>Due Authorization</b> .....	29
<b>6.3</b> <b>No Conflicts</b> .....	29
<b>6.4</b> <b>Consents</b> .....	29
<b>6.5</b> <b>Enforceable Obligations</b> .....	29
<b>6.6</b> <b>Financial Condition</b> .....	29
<b>6.7</b> <b>No Default</b> .....	29
<b>6.8</b> <b>Indebtedness and Off Balance Sheet Indebtedness</b> .....	29

6.9	Litigation.....	30
6.10	[Reserved].....	30
6.11	Taxes .....	30
6.12	Compliance with Law .....	30
6.13	ERISA .....	30
6.14	Use of Proceeds; Margin Stock.....	31
6.15	Investment Company Act.....	31
6.16	Solvency .....	31
6.17	OFAC .....	31
6.18	Anti-Corruption Laws.....	31
SECTION 7. AFFIRMATIVE COVENANTS.....		31
7.1	Information Covenants.....	31
7.2	Preservation of Existence and Franchises .....	33
7.3	Books and Records.....	33
7.4	Compliance with Law .....	33
7.5	Payment of Taxes .....	33
7.6	Insurance .....	33
7.7	Performance of Obligations .....	34
7.8	ERISA .....	34
7.9	Use of Proceeds.....	34
7.10	Audits/Inspections.....	34
7.11	Indebtedness to Capitalization.....	34
SECTION 8. NEGATIVE COVENANTS .....		34
8.1	Nature of Business .....	35
8.2	Consolidation and Merger .....	35
8.3	Sale or Lease of Assets.....	35
8.4	Transactions with Affiliates .....	35
8.5	Fiscal Year .....	35
8.6	Liens.....	36
8.7	Sanctions.....	37
8.8	Anti-Corruption Laws.....	37
SECTION 9. EVENTS OF DEFAULT .....		37
9.1	Events of Default.....	37
9.2	Acceleration; Remedies .....	39
9.3	Allocation of Payments after Event of Default.....	40
SECTION 10. [RESERVED] .....		40
SECTION 11. MISCELLANEOUS .....		40
11.1	Notices and other Communications; Facsimile Copies .....	40
11.2	Right of Set-Off .....	41
11.3	Benefit of Agreement .....	42
11.4	No Waiver; Remedies Cumulative .....	43
11.5	Payment of Expenses, etc .....	43
11.6	Amendments, Waivers and Consents.....	44
11.7	Counterparts; Telecopy.....	44
11.8	Headings .....	44
11.9	[Reserved].....	44



<b>11.10</b>	<b>Survival of Indemnification and Representations and Warranties</b>	44
<b>11.11</b>	<b>Governing Law; Jurisdiction</b>	44
<b>11.12</b>	<b>Waiver of Jury Trial; Waiver of Consequential Damages</b>	45
<b>11.13</b>	<b>Time</b>	45
<b>11.14</b>	<b>Severability</b>	45
<b>11.15</b>	<b>Entirety</b>	45
<b>11.16</b>	<b>Confidentiality</b>	46
<b>11.17</b>	<b>Binding Effect</b>	46
<b>11.18</b>	<b>USA Patriot Act Notice</b>	47
<b>11.19</b>	<b>No Fiduciary Responsibility</b>	47

## SCHEDULES

Schedule 3.5	Place and Manner of Payments
Schedule 11.1	Notices

## EXHIBITS

Exhibit 2.4	Form of Notice of Borrowing of Revolving Loans
Exhibit 2.6	Form of Notice of Continuation/Conversion
Exhibit 2.9	Form of Note
Exhibit 7.1(c)	Form of Compliance Certificate

## **CREDIT AGREEMENT**

**THIS AMENDED AND RESTATED CREDIT AGREEMENT** (this “Credit Agreement”), dated as of November 13, 2015, is entered into between **GULF POWER COMPANY**, a Florida corporation (the “Borrower”), and **U.S. BANK NATIONAL ASSOCIATION** (the “Lender”).

### **RECITALS**

**WHEREAS**, the Borrower and the Lender have entered into that certain Credit Agreement dated as of June 17, 2011 (as amended or modified from time to time prior to the date hereof, the “Existing Credit Agreement”); and

**WHEREAS**, the parties hereto wish to amend and restate the Existing Credit Agreement to make certain amendments and modifications as more fully set forth herein;

**NOW, THEREFORE, IN CONSIDERATION** of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Existing Credit Agreement is amended and restated in its entirety to read as follows:

### **SECTION 1.**

#### **DEFINITIONS AND ACCOUNTING TERMS**

##### **1.1 Definitions.**

As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number the plural and in the plural the singular:

“Adjusted Base Rate” means the Base Rate plus the Applicable Percentage for Base Rate Loans.

“Adjusted Eurodollar Rate” means the Eurodollar Rate plus the Applicable Percentage for Eurodollar Loans.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a corporation if such Person possesses, directly or indirectly, the power (i) to vote 20% or more of the securities having ordinary voting power for the election of directors of such corporation or (ii) to direct or cause direction of the management and policies of such corporation, whether through the ownership of voting securities, by contract or otherwise.

“Applicable Percentage” means, at any time, and with respect to all Eurodollar Loans, Base Rate Loans, Letter of Credit Fees and Unused Fees, the applicable percentage corresponding to the Senior Debt Rating in effect from time to time as described below:



Senior Debt Rating	Applicable Percentage for Eurodollar Loans and Letter of Credit Fees	Applicable Percentage for Base Rate Loans	Applicable Percentage for Unused Fees
I.    ≥ A+ from S&P ≥A1 from Moody's ≥A+ from Fitch	0.875%	0.000%	0.075%
II.    ≥ A but < A+ from S&P ≥A2 but < A1 from Moody's ≥A but < A+ from Fitch	1.000%	0.000%	0.100%
III.    ≥ A- but < A from S&P ≥A3 but < A2 from Moody's ≥A- but < A from Fitch	1.125%	0.125%	0.125%
IV.    ≥ BBB+ but < A- from S&P ≥Baa1 but < A3 from Moody's ≥BBB+ but < A- from Fitch	1.250%	0.250%	0.175%
V.    ≥ BBB but < BBB+ from S&P ≥Baa2 but < Baa1 from Moody's ≥BBB but < BBB+ from Fitch	1.500%	0.500%	0.225%
VI.    ≤ BBB- from S&P ≤ Baa3 from Moody's ≤ BBB- from Fitch or unrated by any two of S&P, Moody's or Fitch	1.750%	0.750%	0.275%

Notwithstanding the above, if at any time there is a split in Senior Debt Ratings among S&P, Moody's and Fitch and (a) two Senior Debt Ratings are equal and higher than the third Senior Debt Rating, the higher Senior Debt Ratings will apply, (b) two Senior Debt Ratings are equal and lower than the third Senior Debt Rating, the lower Senior Debt Ratings will apply or (c) no Senior Debt Ratings are equal, the intermediate Senior Debt Rating will apply. In the event that the Borrower shall maintain Senior Debt Ratings from only two of S&P, Moody's or Fitch and there is a split in such Senior Debt Ratings, (i) in the event of a single level split, the higher Senior Debt Rating (i.e. the lower pricing) will apply and (ii) in the event of a multiple level split, one level below the higher Senior Debt Rating will apply.

The Applicable Percentages for Eurodollar Loans, Base Rate Loans, Letter of Credit Fees and Unused Fees shall be determined and adjusted on the date (each a “Calculation Date”) on which there is any change in the Senior Debt Rating of the Borrower. Each Applicable Percentage shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Applicable Percentage shall be applicable to all existing Revolving Loans as well as any new Revolving Loans made. The Borrower shall notify the Lender in writing immediately upon any change in its Senior Debt Rating.

“Bankruptcy Code” means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

“Base Rate” means, for any day, a simple rate per annum equal to the greatest of (a) the Prime Rate for such day, (b) the sum of 1/2% plus the Federal Funds Rate for such day and (c) the one month Eurodollar Rate plus 1.0%; and if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Credit Agreement.

“Base Rate Loan” means a Revolving Loan which bears interest based on the Adjusted Base Rate.

“Borrower” means Gulf Power Company, a Florida corporation, or such other Person as may become the Borrower pursuant to Section 8.2(b)(ii), and its successors.

“Borrower Obligations” means, without duplication, all of the obligations of the Borrower to the Lender, whenever arising, under this Credit Agreement, the Note or any of the other Credit Documents.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which the Lender specifically or banking institutions generally are authorized or required by law or other governmental action to close in Atlanta, Georgia or New York, New York; provided that in the case of Eurodollar Loans, such day is also a day on which dealings between banks are carried on in Dollar deposits in the London interbank market.

“Calculation Date” has the meaning set forth in the definition of Applicable Percentage.

“Capitalization” means, with respect to the Borrower and its consolidated Subsidiaries (determined on a consolidated basis), without duplication, the sum of (a) the aggregate of (i) the capital stock (but excluding treasury stock and capital stock subscribed and unissued), other equity accounts (including retained earnings and paid-in capital, but excluding accumulated other comprehensive income and loss) of the Borrower and its Subsidiaries as the same appears on its balance sheet prepared in accordance with GAAP as of the date of determination and (ii) the principal amount of Hybrid Securities (other than Hybrid Securities that are Indebtedness) and (b) the amount of all Indebtedness of the Borrower and its Subsidiaries as of the same date.

“Cash Collateralize” means to pledge and deposit with or deliver to the Lender, as collateral for L/C Obligations, cash or deposit account balances or, if the Lender shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Lender. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral, standby letter of credit and other credit support.

“Change of Control” means the failure of The Southern Company, a Delaware corporation, to own more than 51% of the outstanding shares of the capital stock of the Borrower entitled to vote generally for the election of directors of the Borrower.

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Credit Documents” means this Credit Agreement, the Note and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto.

“Debt Rating” means any credit rating of the Borrower by S&P, Moody’s or Fitch.

“Debtor Relief Laws” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event, act or condition which, with notice or lapse of time, or both, would constitute an Event of Default.

“Default Rate” means (a) when used with respect to Borrower Obligations other than Letter of Credit Fees an interest rate equal to the interest rate (including the Applicable Percentage, if any) otherwise applicable to such Borrower Obligations plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Percentage plus 2% per annum.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Dollars” and “\$” means dollars in lawful currency of the United States of America.

“Eligible Assignee” means (a) an Affiliate of the Lender; and (b) any other Person (other than a natural Person) that (i) has a combined capital and surplus of at least \$5,000,000,000 and (ii) unless a Default or Event of Default has occurred and is continuing, is approved by the Borrower (such approval not to be unreasonably withheld or delayed); provided that (x) the Borrower's failure to respond within ten (10) days of receipt of written notice of such assignment shall be deemed to be Borrower's approval thereof and (y) notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrower or any of the Borrower's Affiliates or Subsidiaries.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).



“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which the Borrower or any ERISA Affiliate was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or the Borrower or any ERISA Affiliate incurred a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or receipt by the Borrower or any ERISA Affiliate of notice from the Multiemployer Plan that the Multiemployer Plan is in critical or endangered status, in reorganization or insolvent; (d) the filing by the Borrower or any ERISA Affiliate of a notice of intent to terminate a Pension Plan under a distress termination under Section 4041 of ERISA, (e) receipt by Borrower or any ERISA Affiliate of notice from the PBGC of the institution by the PBGC of proceedings to terminate a Pension Plan; (f) receipt by the Borrower or any ERISA Affiliate of notice from the PBGC of the appointment of a trustee to administer a Pension Plan; (g) the determination by an actuary for the Pension Plan that the Pension Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA and claims for benefit and funding obligations in the ordinary course, upon the Borrower or any ERISA Affiliate.

“Eurodollar Loan” means a Revolving Loan bearing interest based on the Adjusted Eurodollar Rate.

“Eurodollar Base Rate” means:

(a) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Lender, as published by Bloomberg (or such other commercially available source providing such quotations as may be designated by the Lender from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at approximately 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits with a term of one month commencing that day;

provided that (i) to the extent a comparable or successor rate is approved by the Lender in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Lender, such approved rate shall be applied as otherwise reasonably determined by the Lender and (ii) if the Eurodollar Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Credit Agreement.

“Eurodollar Rate” means (a) for any Interest Period with respect to any Eurodollar Loan, a rate per annum determined by the Lender to be equal to the quotient obtained by dividing (i) the Eurodollar Base Rate for such Eurodollar Loan for such Interest Period by (ii) one minus the Eurodollar Reserve Percentage for such Eurodollar Loan for such Interest Period and (b) for any day with respect to any Base Rate Loan the interest rate on which is determined by reference to the Eurodollar Rate, a rate per annum determined by the Lender to be equal to the quotient

obtained by dividing (i) the Eurodollar Base Rate for such Base Rate Loan for such day by (ii) one minus the Eurodollar Reserve Percentage for such Base Rate Loan for such day.

“Eurodollar Reserve Percentage” means for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D, as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to “Eurocurrency liabilities” as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of Eurodollar Loans is determined), whether or not the Lender has any Eurodollar liabilities subject to such reserve requirement at that time. Eurodollar Loans shall be deemed to constitute Eurodollar liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to time to the Lender. The Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

“Event of Default” has the meaning specified in Section 9.1.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Credit Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and any regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements implementing the foregoing.

“Federal Funds Rate” means for any day the rate per annum (rounded upward to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Lender on such day on such transactions as determined by the Lender.

“Fitch” means Fitch Ratings, Inc., or any successor or assignee of the business of such company in the business of rating securities.

“FPSC” means the Florida Public Service Commission.

“GAAP” means generally accepted accounting principles in the United States applied on a consistent basis and subject to Section 1.3.

“Governmental Authority” means any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranty Obligations” means, in respect of any Person, any legally enforceable obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of another Person.

“Honor Date” has the meaning specified in Section 2.2(c)(i).

“Hybrid Securities” means (a) any Trust Preferred Obligations and any Junior Subordinated Deferred Interest Debt Obligations and (b) any other securities of the Borrower (other than capital stock of the Borrower) that are afforded equity treatment by any rating agency at the time of issuance of such securities.

“Indebtedness” means, as to any Person, without duplication: (i) all obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments, including, without limitation, the obligations of such Person under the SCFC Notes; (ii) all obligations of such Person for the deferred purchase price of property or services (except trade accounts payable arising in the ordinary course of business); (iii) all capital lease obligations of such Person; (iv) all Indebtedness of others secured by a Lien on any properties, assets or revenues of such Person (other than stock, partnership interests or other equity interests of such Person in entities other than the Borrower or any of its Subsidiaries) to the extent of the lesser of the value of the property subject to such Lien or the amount of such Indebtedness; (v) all Guaranty Obligations; and (vi) all non-contingent obligations of such Person under any letters of credit or bankers’ acceptances. It is understood and agreed for purposes of calculations under Section 7.11 of this Credit Agreement that Indebtedness (including Guaranty Obligations) shall not include any Indebtedness with respect to Hybrid Securities, as long as (A) the maturity date of such Hybrid Securities is subsequent to the Maturity Date, and (B) such Hybrid Securities are fully subordinated in right of payment to the Borrower Obligations; provided that the aggregate amount of Hybrid Securities excluded for purposes of calculation of Section 7.11 at any date shall not exceed 15% of Capitalization; provided further, that the amount of any mandatory principal amortization or defeasance of Hybrid Securities prior to the Maturity Date and any Hybrid Securities with a maturity date prior to the Maturity Date shall, in each case, be included in this definition of Indebtedness.

“Interest Payment Date” means (a) as to Base Rate Loans, the last day of each fiscal quarter of the Borrower and the Maturity Date and (b) as to Eurodollar Loans, the last day of each applicable Interest Period and the Maturity Date. In addition, where the applicable Interest Period for a Eurodollar Loan is greater than three months, then an Interest Payment Date shall also occur on the last day of each three-month period during such Interest Period. If an Interest Payment Date falls on a date which is not a Business Day, such Interest Payment Date shall be deemed to be the next succeeding Business Day, except that in the case of Eurodollar Loans where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day.

“Interest Period” means, as to Eurodollar Loans, a period of one, two, three or six months’ duration or such other periods as agreed to by the Lender, as the Borrower may elect and as may be available, commencing, in each case, on the date of the borrowing (including continuations and conversions of Eurodollar Loans); provided, however, (i) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (ii) no Interest Period shall extend beyond the Maturity Date and (iii) with respect to Eurodollar Loans, where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month.



“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement and instrument entered into by the Lender and the Borrower or in favor of the Lender or the Borrower and relating to any such Letter of Credit.

“Junior Subordinated Deferred Interest Debt Obligations” means subordinated deferrable interest debt obligations of the Borrower or one of its Subsidiaries.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means the Lender’s funding of any L/C Borrowing.

“L/C Beneficiary” means any Person named as the beneficiary on any Letter of Credit issued hereunder.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Loan.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof, extension of the expiry date thereof or the increase of the amount thereof.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4. For all purposes of this Credit Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Letter of Credit” means any standby letter of credit issued hereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Lender.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.2(h).

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction or other similar recording or notice statute, and any lease in the nature thereof).

“Material Adverse Effect” means a material adverse effect on (a) the operations, assets, financial condition or business of the Borrower, (b) the ability of the Borrower to perform its obligations under this Credit Agreement and the other Credit Documents or (c) the validity or enforceability of this Credit Agreement, any of the other Credit Documents, or the rights and remedies of the Lender hereunder or thereunder; provided, that neither a downgrade in any Debt Rating nor the inability of the Borrower to place commercial paper or variable rate tax exempt pollution control bonds shall, in and of itself, constitute a Material Adverse Effect.

“Maturity Date” means November 13, 2018, as such date may be extended pursuant to Section 2.3; provided that if the Maturity Date as determined hereunder falls on a day that is not a Business Day, such Maturity Date shall be deemed to fall on the next preceding Business Day.

“Moody’s” means Moody’s Investors Service, Inc., or any successor or assignee of the business of such company in the business of rating securities.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or has any continuing liability.

“Net Tangible Assets” means, as of any date, the total assets shown on the balance sheet of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP less (a) all current liabilities and minority interests and (b) goodwill and other identifiable intangibles.

“Note” means the promissory note of the Borrower in favor of the Lender evidencing the Revolving Loans and substantially in the form of Exhibit 2.9, as such promissory note may be amended, modified, supplemented or replaced from time to time.

“Notice of Borrowing of Revolving Loans” means a request by the Borrower for a Revolving Loan (or any continuation or conversion thereof) in the form of Exhibit 2.4.

“Notice of Continuation/Conversion” means a request by the Borrower for the continuation or conversion of a Revolving Loan in the form of Exhibit 2.6.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off Balance Sheet Indebtedness” means any obligation of a Person that would be considered indebtedness for tax purposes but is not set forth on the balance sheet of such Person, including, but not limited to, (a) any synthetic lease, tax retention operating lease, off balance sheet loan or similar off-balance sheet financing product of such Person, (b) the aggregate amount of uncollected accounts receivables of such Person subject at such time to a sale of receivables (or similar transaction) and (c) obligations of any partnership or joint venture that is recourse to such Person.

“Other Taxes” has the meaning set forth in Section 4.4(b).

“Participation Purchaser” shall have the meaning assigned to such term in Section 11.3(d).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, and 436 of the Code and Sections 302 and 303 of ERISA.

“Pension Plan” means any “employee pension benefit plan”, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is maintained, contributed to or required to be contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Person” means any individual, partnership (general or limited), limited liability company, joint venture, firm, corporation, association, trust or other enterprise (whether or not incorporated), or any government or political subdivision or any agency, department or instrumentality thereof.

“Prime Rate” means the per annum rate of interest established from time to time by the Lender at its principal office as its “prime rate.” Such rate is a rate set by the Lender based upon various factors including the Lender’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in the interest rate resulting from a change in the Prime Rate shall become effective as of the opening of business on the day on which such change in the Prime Rate is announced by the Lender.

“Regulation D, U or X” means Regulation D, U or X, respectively, of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Reportable Event” means a “reportable event” as defined in Section 4043(c) of ERISA with respect to which the notice requirements to the PBGC have not been waived.

“Responsible Officer” means, as to the Borrower, any of the Chief Executive Officer, Chief Financial Officer, Treasurer, Comptroller, Secretary, Assistant Treasurer or Assistant Secretary of the Borrower.

“Revolving Loan Commitment” means FIFTY MILLION and NO/100 DOLLARS (\$50,000,000) as such amount may be otherwise reduced in accordance with Section 2.8.

“Revolving Loans” means the revolving loans made by the Lender to the Borrower pursuant to Section 2.1(a).

“Sanction(s)” means any economic or financial sanction administered or enforced by the United States Government, including, without limitation, OFAC, the United Nations Security Council and the European Union or Her Majesty’s Treasury (“HMT”).

“S&P” means Standard & Poor’s Financial Services LLC, a division of McGraw-Hill Financial and any successor thereto.

“SCFC” means Southern Company Funding Corporation, a Delaware corporation, an Affiliate of the Borrower and a wholly-owned Subsidiary of The Southern Company, a Delaware corporation.

“SCFC Notes” means one or more intercompany notes issued by the Borrower to SCFC in support of commercial paper issued by SCFC on behalf of the Borrower pursuant to that certain Financial Services Agreement, dated as of March 15, 2001, between the Borrower and SCFC.

“Senior Debt Rating” means the long-term senior unsecured, non-credit enhanced debt rating of the Borrower by each of S&P, Moody’s or Fitch.

“Significant Subsidiary” means a Subsidiary of the Borrower which represents more than 15% of the Borrower’s assets on a consolidated basis.

“Subsidiary” means, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries has more than 50% equity interest at any time.

“Taxes” has the meaning set forth in Section 4.4(a).

“Trust Preferred Obligations” means the subordinated, deferrable interest debt securities of the Borrower, and, without duplication, any related securities issued by a trust or other special purpose entity in connection therewith.

“Unreimbursed Amount” has the meaning specified in Section 2.2(c)(i).

“Unused Fees” has the meaning set forth in Section 3.4(a).

“Unused Revolving Loan Commitment” means, for any period from the Closing Date to the Maturity Date, the amount by which (a) the average Revolving Loan Commitment for such period exceeds (b) the daily average sum for such period of the aggregate principal amount of all Revolving Loans plus L/C Obligations outstanding.

## **1.2 Computation of Time Periods and Other Definitional Provisions.**

With reference to this Credit Agreement and each other Credit Document, unless otherwise specified herein or in such other Credit Document:



(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Credit Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Credit Document, shall be construed to refer to such Credit Document in its entirety and not to any particular provision thereof, (iv) all references in a Credit Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, Recitals of and Exhibits and Schedules to, the Credit Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all assets and properties, tangible and intangible, real and personal, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Credit Documents are included for convenience of reference only and shall not affect the interpretation of this Credit Agreement or any other Credit Document.

### **1.3 Accounting Terms.**

Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lender hereunder shall be prepared, in accordance with GAAP applied on a consistent basis. All calculations made for the purposes of determining compliance with this Credit Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial statements delivered pursuant to Section 7.1 (or, prior to the delivery of the first financial statements pursuant to Section 7.1, consistent with the financial statements described in Section 5.1(e)); provided, however, (a) if (i) the Borrower shall object to determining such compliance on such basis at the time of delivery of such financial statements due to any change in GAAP or the rules promulgated with respect thereto or (ii) the Lender shall so object in writing within 30 days after delivery of such financial statements, then such calculations shall be made on a basis consistent with the most recent financial statements delivered by the Borrower to the Lender as to which no such objection shall have been made and (b) it is agreed that for purposes of calculations under Section 7.11 of this Credit Agreement, capital lease obligations shall be calculated in accordance with GAAP as of the Closing Date unless otherwise agreed by the Borrower and the Lender.

#### **1.4 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

#### **1.5 Rounding Rates.**

Any financial ratios required to be maintained by the Borrower pursuant to this Credit Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number). The Lender does not warrant, nor accept responsibility, nor shall the Lender have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Base Rate” or with respect to any comparable or successor rate thereto (except such as shall result from the gross negligence or willful misconduct of the Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction).

### **SECTION 2.**

#### **LOANS**

##### **2.1 Revolving Loan Commitment.**

Subject to the terms and conditions set forth herein, the Lender agrees to make revolving loans to the Borrower, in Dollars, at any time and from time to time, during the period from the Closing Date to the Maturity Date (each a “Revolving Loan” and collectively the “Revolving Loans”); provided, however, that the sum of the aggregate amount of Revolving Loans plus the aggregate L/C Obligations outstanding shall not exceed the Revolving Loan Commitment. Subject to the terms of this Credit Agreement, the Borrower may borrow, repay and reborrow the amount of the Revolving Loan Commitment.

##### **2.2 Letters of Credit.**

###### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, the Lender agrees (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, the sum of the aggregate amount of Revolving Loans outstanding plus the aggregate amount of L/C Obligations outstanding shall not exceed the Revolving Loan Commitment.

(ii) Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding subsection (i).

(iii) Subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the period set forth in subsection (i)(A), obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(iv) The Lender shall not issue any Letter of Credit, if:

(A) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Lender has approved such expiry date;

(B) the issuance of such Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally;

(C) except as otherwise agreed by the Lender, such Letter of Credit is in an initial stated amount less than \$500,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; or

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(v) The Lender shall not amend any Letter of Credit if the Lender would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(vi) The Lender shall not be under an obligation to amend a Letter of Credit if (A) the Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the L/C Beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the Lender in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the Lender not later than 11:00 a.m. at least two Business Days (or such later date and time as the Lender may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be.

(ii) In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Lender: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the L/C Beneficiary; (E) the documents to be presented by such L/C Beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such L/C Beneficiary in case of any drawing thereunder; and (G) such other matters as the L/C Issuer may reasonably require.

(iii) In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Lender (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall

be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Lender may reasonably require.

(iv) Subject to the terms and conditions hereof, the Lender shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Lender's usual and customary business practices, unless the Lender has received written notice from the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 5.2 shall not then be satisfied.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the L/C Beneficiary, the Lender will also deliver to the Borrower a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from any L/C Beneficiary of any notice of a drawing under a Letter of Credit, the Lender shall promptly (and in any event not later than one Business Day prior to the date of any payment by the Lender under a Letter of Credit (each such date, an "Honor Date"), unless the terms of the applicable Letter of Credit require otherwise) notify the Borrower thereof. Not later than 11:00 a.m. on the Honor Date, the Borrower shall reimburse the Lender an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the Lender by such time, the Borrower shall be deemed to have requested a Revolving Loan comprised of a Base Rate Loan to be disbursed, and the Lender shall be deemed to have made a Revolving Loan to the Borrower, on the Honor Date in an amount equal to the amount of the unreimbursed drawing (the "Unreimbursed Amount"), without regard to the minimum and multiples specified in Section 2.7 for the principal amount of Revolving Loans, but subject to the amount of the unutilized portion of the Revolving Loan Commitment and the conditions set forth in Section 5.2 (other than the delivery of a Notice of Borrowing of Revolving Loans).

(ii) [Reserved.]

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Loan because the conditions set forth in Section 5.2 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the Lender an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate.

(d) [Reserved.]

(e) Obligations Absolute. The obligation of the Borrower to reimburse the Lender for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances (other than any circumstances resulting from the gross negligence or willful misconduct of the Lender), including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement or any other Credit Document;



(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any L/C Beneficiary or any transferee of such Letter of Credit (or any Person for whom any such L/C Beneficiary or any such transferee may be acting), the Lender or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit; or

(iv) any payment by the Lender under such Letter of Credit against presentation of a draft or certificate that substantially complies with the terms of such Letter of Credit; or any payment made by the Lender under such Letter of Credit in accordance with the material terms of such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any L/C Beneficiary or any transferee permitted by such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Lender. The Borrower shall be conclusively deemed to have waived any such claim against the Lender and its correspondents unless such notice is given as aforesaid.

(f) Role of Lender. The Borrower agrees that, in paying any drawing under a Letter of Credit, the Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. The Borrower hereby assumes all risks of the acts or omissions of any L/C Beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the L/C Beneficiary or transferee at law or under any other agreement. None of the Lender, any of its Affiliates nor any correspondent, participant or assignee of the Lender shall be liable or responsible for any of the matters described in clauses (i) through (iv) of Section 2.2(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the Lender, and the Lender may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the Lender's willful misconduct or gross negligence or the Lender's willful failure to pay under any Letter of Credit after the presentation to it by the L/C Beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP. Unless otherwise expressly agreed by the Lender and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Lender a Letter of Credit fee (the “Letter of Credit Fee”) for each Letter of Credit equal to the Applicable Percentage times the maximum daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable fifteen (15) days after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Percentage during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Percentage separately for each period during such quarter that such Applicable Percentage was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Lender, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to the Lender. The Borrower shall pay directly to the Lender for its own account a fronting fee with respect to each Letter of Credit, at a rate per annum equal to 0.20% computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable fifteen (15) days after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4. In addition, the Borrower shall pay directly to the Lender for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Lender relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

### **2.3 Extension of Maturity Date..**

Not more than 75 days and not less than 20 days prior to each annual anniversary of the Closing Date, the Borrower may, in each case, request in writing that the Lender extend the then current Maturity Date for an additional one year; provided, however, that the Maturity Date may be extended under this Section 2.3 no more than three (3) times in the aggregate. The Lender shall provide the Borrower, not more than 15 days subsequent to any such request by the Borrower, with written notice regarding whether it agrees to extend the then current Maturity Date. Each decision by the Lender shall be in its sole discretion and failure by the Lender to give timely written notice hereunder shall be deemed a decision by the Lender not to extend the Maturity Date. If the Lender timely agrees in writing to extend the Maturity Date, then the Maturity Date shall be extended for an additional one year pursuant to a duly executed written amendment to this Credit Agreement. If the Lender fails to extend the Maturity Date, then the Borrower shall pay in full all outstanding Revolving Loans, together with accrued and unpaid interest thereon and all sums with respect thereto; it being understood that on and after the Maturity Date, the Borrower may no longer request, and the Lender is no longer obligated to make, new Revolving Loans under this Credit Agreement.

#### **2.4 Method of Borrowing for Revolving Loans.**

In the case of Revolving Loans, by no later than 2:00 p.m. (a) on the date of the requested borrowing of Revolving Loans that will be Base Rate Loans or (b) three Business Days prior to the date of the requested borrowing of Revolving Loans that will be Eurodollar Loans, the Borrower shall submit a written Notice of Borrowing of Revolving Loans in the form of Exhibit 2.4 completed and signed by a Responsible Officer of the Borrower to the Lender setting forth (i) the amount requested, (ii) whether such Revolving Loans shall accrue interest at the Adjusted Base Rate or the Adjusted Eurodollar Rate, (iii) with respect to Revolving Loans that will be Eurodollar Loans, the Interest Period applicable thereto and (iv) certification that the Borrower has complied in all respects with Section 5.2.

#### **2.5 Funding of Revolving Loans.**

Upon receipt of a Notice of Borrowing of Revolving Loans, the Lender shall make the amount of the requested Revolving Loans available to the Borrower by 4:00 p.m. (in the case of any Notice of Borrowing of Revolving Loans delivered after 12:00 noon) on the date specified in the Notice of Borrowing of Revolving Loans by deposit in Dollars of immediately available funds to the account of the Borrower that is designated on the Notice of Borrowing of Revolving Loans; provided, that, for any Notice of Borrowing of Revolving Loans submitted by the Borrower no later than 12:00 noon, the Lender shall make the requested Revolving Loans available to the Borrower by 2:00 p.m. on the date specified in the Notice of Borrowing of Revolving Loans.

#### **2.6 Continuations and Conversions.**

The Borrower shall have the option, on any Business Day, to continue existing Eurodollar Loans for a subsequent Interest Period, to convert Base Rate Loans into Eurodollar Loans or to convert Eurodollar Loans in Dollars into Base Rate Loans; provided, however, that (a) each such continuation or conversion must be requested by the Borrower pursuant to a written Notice of Continuation/Conversion, in the form of Exhibit 2.6, in compliance with the terms set forth below, (b) except as provided in Section 4.1, Eurodollar Loans may only be continued or converted into Base Rate Loans on the last day of the Interest Period applicable hereto, (c) Eurodollar Loans may not be continued nor may Base Rate Loans be converted into Eurodollar Loans during the existence and continuation of a Default or Event of Default and (d) any request to extend a Eurodollar Loan that fails to comply with the terms hereof or any failure to request an extension of a Eurodollar Loan at the end of an Interest Period shall constitute a conversion in each case, to a Base Rate Loan on the last day of the applicable Interest Period. Each continuation or conversion must be requested by the Borrower no later than 12:00 p.m. (noon) (i) on the date for a requested conversion of a Eurodollar Loan to a Base Rate Loan or (ii) three Business Days prior to the date for a requested continuation of a Eurodollar Loan or conversion of a Base Rate Loan to a Eurodollar Loan, in each case pursuant to a written Notice of Continuation/Conversion submitted to the Lender which shall set forth (A) whether the Borrower wishes to continue or convert such Revolving Loans and (B) if the request is to continue a Eurodollar Loan or convert a Base Rate Loan to a Eurodollar Loan, the Interest Period applicable thereto.

#### **2.7 Minimum Amounts.**

Each request for a Revolving Loan or a conversion or continuation hereunder shall be subject to the following requirements: (a) each Eurodollar Loan shall be in a minimum of \$5,000,000, (b) each Base Rate Loan shall be in a minimum amount of the lesser of \$5,000,000 or the remaining amount available to be borrowed and (c) no more than ten Eurodollar Loans shall be outstanding hereunder at any one time. For the purposes of this Section 2.7, all Eurodollar Loans with the same Interest Periods shall be considered as one Eurodollar Loan, but Eurodollar Loans with different Interest Periods, even if they

begin on the same date, shall be considered separate Eurodollar Loans. Any Revolving Loan requested shall be in an integral multiple of \$1,000,000 unless the request is for all of the remaining amount of the Revolving Loan Commitment available to be borrowed.

## **2.8 Reductions of Revolving Loan Commitment.**

Upon at least two Business Days' prior written notice to the Lender, the Borrower shall have the right to permanently terminate or reduce the aggregate unused amount of the Revolving Loan Commitment, at any time or from time to time; provided that (a) each partial reduction shall be in an aggregate amount at least equal to \$5,000,000 and in integral multiples of \$1,000,000 above such amount, and (b) no reduction shall be made which would reduce the Revolving Loan Commitment to an amount less than the then outstanding Revolving Loans plus the aggregate L/C Obligations outstanding. Any reduction in (or termination of) the Revolving Loan Commitment shall be permanent and may not be reinstated.

## **2.9 Evidence of Obligations.**

(a) Lender Records. The date, amount, type, interest rate and duration of Interest Period (if applicable) of each Revolving Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books; provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing hereunder or under the Note in respect of the Revolving Loans to be evidenced by the Note, and each such recordation or endorsement shall be conclusive and binding absent manifest error.

(b) Note. The Revolving Loans made by the Lender shall be evidenced by a promissory note of the Borrower payable to the Lender in substantially the form of Exhibit 2.9 (the "Note") and shall be delivered by the Borrower in accordance with Section 5.1(a).

# **SECTION 3.**

## **PAYMENTS**

### **3.1 Interest.**

#### **(a) Interest Rate.**

(i) All Revolving Loans that are Base Rate Loans shall accrue interest at the Adjusted Base Rate.

(ii) All Eurodollar Loans shall accrue interest at the Adjusted Eurodollar Rate applicable to such Eurodollar Loan.

(b) Default Rate of Interest. Upon the occurrence, and during the continuance, of an Event of Default, the principal of and, to the extent permitted by law, interest on the Revolving Loans and any other amounts owing hereunder or under the other Credit Documents shall bear interest, payable on demand, at the Default Rate.

(c) Interest Payments. Interest on Revolving Loans shall be due and payable in arrears on each Interest Payment Date.



### **3.2 Prepayments.**

(a) Voluntary Prepayments. The Borrower shall have the right to prepay Revolving Loans in whole or in part from time to time without premium or penalty; provided, however, that (i) Eurodollar Loans may only be prepaid on three Business Days' prior written notice to the Lender and any prepayment of Eurodollar Loans will be subject to Section 4.3; and (ii) each such partial prepayment of Revolving Loans shall be in the minimum principal amount of \$1,000,000. Amounts prepaid hereunder shall be applied as the Borrower may elect; provided that if the Borrower fails to specify the application of a voluntary prepayment then such prepayment shall be applied first to Revolving Loans that are Base Rate Loans, and second to Eurodollar Loans in direct order of Interest Period maturities.

(b) Mandatory Prepayments.

(i) If at any time the aggregate amount of Revolving Loans plus the aggregate L/C Obligations outstanding exceeds the Revolving Loan Commitment, the Borrower shall immediately make a principal payment to the Lender in the manner and in an amount such that the sum of the aggregate amount of Revolving Loans outstanding plus the aggregate L/C Obligations outstanding is less than or equal to the Revolving Loan Commitment.

(ii) Any prepayments made under this Section 3.2(b) shall be subject to Section 4.3 and shall be applied first to Revolving Loans that are Base Rate Loans, and second to Eurodollar Loans in direct order of Interest Period maturities.

### **3.3 Payment in Full at Maturity.**

Subject to the terms of Section 2.3, on the Maturity Date, the entire outstanding principal amount owing under the Credit Documents, together with accrued but unpaid interest and all other sums owing under the Credit Documents, shall be due and payable in full, unless accelerated sooner pursuant to Section 9.2.

### **3.4 Fees.**

(a) Unused Fees.

(i) In consideration of the Revolving Loan Commitment being made available by the Lender hereunder, the Borrower agrees to pay to the Lender a per annum fee equal to the Applicable Percentage for Unused Fees multiplied by the Unused Revolving Loan Commitment (the "Unused Fees").

(ii) The accrued Unused Fees shall be due and payable in arrears fifteen days after the end of each fiscal quarter of the Borrower for the immediately preceding fiscal quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date, as well as on the Maturity Date.

(b) Upfront Fee. The Borrower shall pay to the Lender, on the Closing Date, a fee equal to 0.15% multiplied by the Revolving Loan Commitment.

### **3.5 Place and Manner of Payments.**

All payments of principal, interest, fees, expenses and other amounts to be made by the Borrower under this Credit Agreement shall be made unconditionally and without deduction for any counterclaim, defense, recoupment or setoff. All such payments shall be received not later than 2:00 p.m. on the date when due in Dollars and in immediately available funds by the Lender as set forth on Schedule 3.5 (which Schedule may be amended by the Lender at any time by delivering written notice of such amendment to the Borrower). The Borrower shall, at the time it makes any payment under this Credit Agreement, specify to the Lender the Revolving Loans, fees or other amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that it fails to specify, or if such application would be inconsistent with the terms hereof, the Lender shall apply such payment in such manner as it reasonably determines in its sole discretion). Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (subject to accrual of interest and fees for the period of such extension), except that, in the case of Eurodollar Loans (or interest payable with respect thereto), if the extension would cause the payment to be made in the next following calendar month, then such payment shall instead be made on the next preceding Business Day.

### **3.6 [Reserved].**

### **3.7 Computations of Interest and Fees.**

(a) Except for Base Rate Loans bearing interest based on the Prime Rate, on which interest shall be computed on the basis of a 365 or 366 day year, as the case may be, all computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days.

(b) It is the intent of the Lender and the Borrower to conform to and contract in strict compliance with applicable usury Law from time to time in effect. All agreements between the Lender and the Borrower are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, or received under this Credit Agreement, under the Note or otherwise, exceed the maximum nonusurious amount permissible under applicable Law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such documents shall be automatically reduced to the maximum nonusurious amount permitted under applicable Law, without the necessity of execution of any amendment or new document. If the Lender shall ever receive anything of value which is characterized as interest on the Revolving Loans under applicable Law and which would, apart from this provision, be in excess of the maximum lawful amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Revolving Loans and not to the payment of interest, or refunded to the Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Revolving Loans. The right to demand payment of the Revolving Loans or any other indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and the Lender does not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lender with respect to the Revolving Loans shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal

or extension) of the Revolving Loans so that the amount of interest on account of such indebtedness does not exceed the maximum nonusurious amount permitted by applicable Law.

## **SECTION 4.**

### **ADDITIONAL PROVISIONS REGARDING LOANS**

#### **4.1 Eurodollar Loans.**

(a) Unavailability. In the event that the Lender shall have determined in good faith (i) that Dollar deposits in the principal amounts requested with respect to a Eurodollar Loan are not generally available in the London interbank Eurodollar market or (ii) that reasonable means do not exist for ascertaining the Eurodollar Rate or the Lender shall have determined that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to the Lender of funding such Eurodollar Loan, the Lender shall, as soon as practicable thereafter, give written notice of such determination to the Borrower. In the event of any such determination under clauses (i) or (ii) above, until the Lender shall have advised the Borrower that the circumstances giving rise to such notice no longer exist, (A) any request by the Borrower for Eurodollar Loans shall be deemed to be a request for Base Rate Loans and (B) any request by the Borrower for conversion into or continuation of Eurodollar Loans shall be deemed to be a request for conversion into or continuation of Base Rate Loans.

(b) Change in Legality.

Notwithstanding any other provision herein, if any (i) adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted, implemented or issued) shall make it unlawful for the Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrower, the Lender may, until such time as the circumstances giving rise to such unlawfulness no longer exists:

(A) declare that Eurodollar Loans, and conversions to or continuations of Eurodollar Loans, will not thereafter be made by the Lender hereunder, whereupon any request by the Borrower for, or for conversion into or continuation of, Eurodollar Loans shall be deemed a request for, or for conversion into or continuation of, Base Rate Loans, unless such declaration shall be subsequently withdrawn; and

(B) require that all outstanding Eurodollar Loans made by it be converted to Base Rate Loans in which event all such Eurodollar Loans shall be automatically converted to Base Rate Loans.

In the event the Lender shall exercise its rights under clause (A) or (B) above, all payments and prepayments of principal which would otherwise have been applied to repay the Eurodollar Loans that would have been made by the Lender or the converted Eurodollar Loans of the Lender shall instead be applied to repay the Base Rate Loans made by the Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(c) Increased Costs. If at any time the Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to the making, the commitment to make or the maintaining of any Eurodollar Loan or Letter of Credit because of (i) any adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority including, without limitation, the imposition, modification or deemed applicability of any reserves, deposits or similar requirements (such as, for example, but not limited to, a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the Adjusted Eurodollar Rate) (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted or issued), then the Borrower shall pay to the Lender within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as the Lender may determine in its sole discretion) as may be required to compensate the Lender for such increased costs or reductions in amounts receivable hereunder.

Each determination and calculation made by the Lender under this Section 4.1 shall, absent manifest error, be binding and conclusive on the parties hereto.

#### **4.2 Capital Adequacy.**

If, after the date hereof, the Lender has determined that the adoption or effectiveness of any applicable Law, rule or regulation regarding capital adequacy or liquidity, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Lender's (or parent corporation's) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which the Lender, or its parent corporation, could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration the Lender's (or parent corporation's) policies with respect to capital adequacy and liquidity)(provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted, implemented or issued), then the Borrower shall pay to the Lender within 15 days after demand, which



demand shall contain the basis and calculations supporting such demand, such additional amount or amounts as will compensate the Lender for such reduction. Each determination by the Lender of amounts owing under this Section 4.2 shall, absent manifest error, be conclusive and binding on the parties hereto.

#### **4.3    Compensation.**

The Borrower shall compensate the Lender, within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, for all reasonable losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by the Lender to fund its Eurodollar Loans) which the Lender may sustain:

- (a) if for any reason (other than a default by the Lender) a borrowing, continuation or conversion of Eurodollar Loans does not occur on a date specified therefor in a Notice of Borrowing of Revolving Loans or Notice of Continuation/Conversion, as the case may be;
- (b) if any prepayment, repayment, continuation or conversion of any Eurodollar Loan occurs on a date which is not the last day of an Interest Period applicable thereto, including, without limitation, in connection with any demand, acceleration, mandatory prepayment or otherwise (including any demand under this Section 4); or
- (c) if the Borrower fails to repay its Eurodollar Loans when required by the terms of this Credit Agreement.

Calculation of all amounts payable to the Lender under this Section 4.3 shall be made as though the Lender has actually funded its relevant Eurodollar Loan through the purchase of a Eurodollar deposit bearing interest at the Adjusted Eurodollar Rate in an amount equal to the amount of that Revolving Loan, having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of the Lender to a domestic office of the Lender in the United States of America; provided, however, that the Lender may fund each of its Eurodollar Loans in any manner it sees fit and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section 4.3. Each determination and calculation hereunder shall be in good faith and shall be conclusive absent manifest error.

#### **4.4    Taxes.**

- (a) Tax Liabilities Imposed on the Lender. (i) Any and all payments by the Borrower hereunder or under any of the Credit Documents shall be made, in accordance with the terms hereof and thereof, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (A) taxes measured by net income and franchise taxes imposed on the Lender by the jurisdiction under the laws of which the Lender is organized or transacting business or any political subdivision thereof and (B) any U.S. federal withholding taxes imposed under FATCA (all such non-excluded taxes, being hereinafter referred to as "Taxes"). If any applicable Laws (as determined in the good faith discretion of the Lender or Borrower, as applicable) require the deduction or withholding of any tax from any such payment hereunder, then the Lender or Borrower shall be entitled to make such deduction or withholding. If the Borrower shall be required by applicable Law to deduct any taxes from or in respect of any sum payable hereunder to the Lender, (A) to the extent that the withholding or deduction is made on account of Taxes, the sum payable by the Borrower shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this

Section 4.4) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (B) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Other Taxes. In addition, the Borrower agrees to pay, upon written notice from the Lender and prior to the date when penalties attach thereto, all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any state or political subdivision thereof or any applicable foreign jurisdiction that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Credit Agreement (collectively, the “Other Taxes”).

(c) Refunds. If the Lender shall become aware that it is entitled to claim a refund (or a refund in the form of a credit) (each, a “Refund”) from a Governmental Authority (as a result of any error in the amount of Taxes or Other Taxes paid to such Governmental Authority or otherwise) of Taxes or Other Taxes which the Borrower has paid, or with respect to which the Borrower has paid additional amounts, pursuant to this Section 4.4, it shall promptly notify the Borrower in writing of the availability of such Refund and shall, within 30 days after receipt of written notice by the Borrower make a claim to such Governmental Authority for such Refund at the Borrower’s expense if, in the judgment of the Lender, the making of such claim will not be otherwise disadvantageous to it; provided that nothing in this subsection (c) shall be construed to require the Lender to institute any administrative proceeding (other than the filing of a claim for any such Refund) or judicial proceeding to obtain such Refund.

If the Lender receives a Refund from a Governmental Authority (as a result of any error in the amount of Taxes or Other Taxes paid to such Governmental Authority or otherwise) of any Taxes or Other Taxes which have been paid by the Borrower, or with respect to which the Borrower has paid additional amounts pursuant to this Section 4.4, it shall promptly pay to the Borrower the amount so received (but only to the extent of payments made, or additional amounts paid, by the Borrower under this Section 4.4 with respect to Taxes or Other Taxes giving rise to such Refund), net of all reasonable out-of-pocket expenses (including the net amount of taxes, if any, imposed on the Lender with respect to such Refund) of the Lender, and without interest (other than interest paid by the relevant Governmental Authority with respect to such Refund); provided, however, that the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower (plus penalties, interest or other charges) to the Lender in the event the Lender is required to repay such Refund to such Governmental Authority. Nothing contained in this Section 4.4(c) shall require the Lender to make available any of its tax returns (or any other information that it deems to be confidential or proprietary) or to alter its tax accounting practices.

(d) Foreign Lender. If the Lender (which, for purposes of this Section 4.4, shall include any Affiliate of the Lender that makes any Eurodollar Loan pursuant to the terms of this Credit Agreement) is not a “United States person” (as such term is defined in Section 7701(a)(30) of the Code) it shall submit to the Borrower on or before the Closing Date, two duly completed and signed copies of (1) Form W-8BEN or W-8BEN-E, as applicable, of the United States Internal Revenue Service, or a successor applicable form, entitling the Lender to a complete exemption from withholding on all amounts to be received by the Lender pursuant to this Credit Agreement and/or any Notes, (2) Form W-8ECI of the United States Internal Revenue Service, or a successor applicable form, relating to all amounts to be received by the Lender pursuant to this Credit Agreement and/or any Notes or (3) any other form (together with supplementary documentation) prescribed by applicable Laws entitling the Lender to a complete exemption from United States withholding tax. The Lender shall, from time to time after submitting either such form, submit to the Borrower such additional duly completed and signed copies of such forms (or

such successor forms or other documents as shall be adopted from time to time by the relevant United States taxing authorities) as may be (1) reasonably requested in writing by the Borrower and (2) appropriate under then current United States laws or regulations. If and for any period during which the provisions of this Section 4.4(d) are not satisfied by or with respect to the Lender, no provision of this Credit Agreement shall require the Borrower to indemnify with respect to any resulting withholding of United States taxes imposed on or with respect to the Lender as a result of such noncompliance for the periods to which such noncompliance relates, unless such noncompliance is directly attributable to a change in a law, rule or regulation issued by a Governmental Authority which results in the inability of the Lender to provide such form. If a payment made to the Lender hereunder would be subject to United States federal withholding tax imposed by FATCA if the Lender were to fail to comply with the applicable requirements of FATCA, the Lender shall deliver to the Borrower, at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower, such documentation prescribed by applicable Law and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA, to determine that the Lender has or has not complied with the Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(e) United States Lender. If the Lender is a United States Person, it shall, on or prior to the date it becomes a party hereto and from time to time thereafter if requested in writing by the Borrower, provide the Borrower with a properly completed and duly executed copy of Internal Revenue Service Form W-9, or any successor to such form.

#### **4.5 Mitigation.**

The Lender shall use reasonable efforts to avoid or mitigate any increased cost or suspension of the availability of an interest rate or the payment of Taxes or Other Taxes under Sections 4.1 through 4.4 above to the greatest extent practicable (including transferring the Revolving Loans to another lending office or Affiliate of the Lender) unless, in the reasonable opinion of the Lender, such efforts would be likely to have an adverse effect upon it.

### **SECTION 5.**

#### **CONDITIONS PRECEDENT**

##### **5.1 Closing Conditions.**

The obligation of the Lender to enter into this Credit Agreement is subject to satisfaction of the following conditions on or prior to the Closing Date (in form and substance acceptable to the Lender):

(a) Executed Credit Documents. Receipt by the Lender of duly executed copies of (i) this Credit Agreement and (ii) the Note.

(b) Officer's Certificate. Receipt by the Lender of a certificate of a Responsible Officer of the Borrower stating that, as of the Closing Date, (i) there exists no Default or Event of Default, (ii) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects, (iii) the Borrower is in compliance with the financial covenant set forth in Section 7.11, as demonstrated by the covenant calculations on a schedule attached thereto and (iv) the conditions set forth in Sections 5.1(g) and (i) have been satisfied.

(c) Opinion of Counsel. Receipt by the Lender of an opinion, or opinions, satisfactory to the Lender, addressed to the Lender from legal counsel to the Borrower.

(d) Corporate Documents. Receipt by the Lender of the following:

(i) Charter Documents. (A) A copy of the Borrower's Articles of Incorporation, certified by the Secretary of State of the State of Florida or (B) a representation that the Borrower's Articles of Incorporation have not changed since the date of delivery of the certificate of the Secretary of State pursuant to the Existing Credit Agreement.

(ii) Bylaws. A copy of the bylaws of the Borrower certified by a secretary or assistant secretary of the Borrower to be true and correct as of the Closing Date.

(iii) Resolutions. Copies of resolutions of the Board of Directors of the Borrower approving and adopting the Credit Documents to which it is a party and the transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of the Borrower to be true and correct and in force and effect as of the Closing Date.

(iv) Good Standing. Copies of (A) certificates of good standing, existence or its equivalent with respect to the Borrower certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of incorporation and the principal place of business of the Borrower and (B) to the extent available, a certificate indicating payment of all corporate franchise taxes certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of its incorporation and the principal place of business of the Borrower.

(v) Incumbency. An incumbency certificate of the Borrower, certified by a secretary or assistant secretary of the Borrower to be true and correct as of the Closing Date.

(e) Financial Statements. Receipt by the Lender of (i) the consolidated audited financial statements of the Borrower dated as of December 31, 2014, including balance sheets and income and cash flow statements, in each case audited by independent public accountants of recognized standing and prepared in accordance with GAAP and (ii) the consolidated unaudited quarterly financial statements of the Borrower for the three month periods as of and for March 31, 2015, June 30, 2015 and September 30, 2015, including balance sheets and income and cash flow statements, in each case prepared in accordance with GAAP.

(f) Fees and Expenses. Payment by the Borrower of all fees and expenses owed by it to the Lender, including, without limitation, payment of the upfront fee payable pursuant to Section 3.4(b).

(g) Material Adverse Effect. No event or condition shall have occurred since the date of the financial statements delivered pursuant to Section 5.1(e) above that has had or would be likely to have a Material Adverse Effect.

(h) Termination of Existing Credit Agreement. Receipt by the Lender of evidence that all obligations under the Existing Credit Agreement have been paid in full and all commitments thereunder terminated.



(i) Litigation. Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2014, in the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2015 and in any current report on Form 8-K filed by the Borrower between December 31, 2014 and the Closing Date, there shall not exist any action, suit, investigation or proceeding, nor shall any action, suit or investigation be pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority that materially adversely affects the Borrower or any transaction contemplated hereby or the ability of the Borrower to perform its obligations under the Credit Documents.

(j) Other. Receipt by the Lender of such other documents, instruments, agreements or information as reasonably requested by the Lender.

## **5.2 Conditions to Loans/Letters of Credit.**

In addition to the conditions precedent stated elsewhere herein, the Lender shall not be obligated to make any Revolving Loans hereunder or issue Letters of Credit hereunder unless:

(a) Request. The Borrower shall have timely delivered a duly executed and completed Notice of Borrowing of Revolving Loans or Letter of Credit Application, as applicable, in conformance with all the terms and conditions of this Credit Agreement;

(b) Representations and Warranties. The representations and warranties made by the Borrower in the Credit Documents are true and correct in all material respects at and as if made as of the date of the funding of the requested Revolving Loans; provided, that this Section 5.2(b) shall not apply to the representations set forth in Sections 6.6, 6.8 and 6.9; and

(c) No Default. On the date of the funding of the requested Revolving Loans, no Default or Event of Default has occurred and is continuing or would be caused by making the requested Revolving Loans, including, without limitation, the restrictions on (i) the amount of Revolving Loans that may be outstanding as set forth in Sections 2.1 and 2.2 and (ii) the use of proceeds set forth in Section 7.9.

The delivery of each Notice of Borrowing of Revolving Loans or Letter of Credit Application, as applicable, shall constitute a representation and warranty by the Borrower of the correctness of the matters specified in subsections (b) and (c) above.

## **SECTION 6.**

### **REPRESENTATIONS AND WARRANTIES**

The Borrower hereby represents and warrants to the Lender that:

#### **6.1 Organization and Good Standing.**

The Borrower and each Significant Subsidiary (a) is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (b) is duly qualified and in good standing as a foreign corporation authorized to do business in every jurisdiction where the failure to so qualify would have a Material Adverse Effect and (c) has the requisite corporate power and authority to own its properties and to carry on its business as now conducted and as proposed to be conducted.

## **6.2 Due Authorization.**

The Borrower (a) has the requisite corporate power and authority to execute, deliver and perform this Credit Agreement and the other Credit Documents and to incur the obligations herein and therein provided for and (b) is duly authorized to, and has been authorized by all necessary corporate action, to execute, deliver and perform this Credit Agreement and the other Credit Documents.

## **6.3 No Conflicts.**

Neither the execution and delivery of the Credit Documents, nor the consummation of the transactions contemplated therein, nor performance of and compliance with the terms and provisions thereof by the Borrower will (a) violate or conflict with any provision of its certificate or articles of incorporation or bylaws, (b) violate, contravene or materially conflict with any law, regulation (including without limitation, Regulation D, U or X), order, writ, judgment, injunction, decree or permit applicable to it, (c) violate, contravene or materially conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which could have a Material Adverse Effect or (d) result in or require the creation of any Lien upon or with respect to its properties.

## **6.4 Consents.**

No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Credit Agreement or any of the other Credit Documents that has not been obtained, except for an order or orders of the FPSC and/or the Federal Energy Regulatory Commission, which order or orders will be obtained (if required) prior to, and will be in effect on, the date of any Revolving Loans hereunder.

## **6.5 Enforceable Obligations.**

This Credit Agreement and the other Credit Documents have been duly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

## **6.6 Financial Condition.**

The financial statements provided to the Lender as described in Section 5.1(e): (a) fairly present the financial condition and operations of the Borrower as of the date thereof and (b) were prepared in accordance with GAAP.

## **6.7 No Default.**

No Default or Event of Default presently exists.

## **6.8 Indebtedness and Off Balance Sheet Indebtedness.**

As of the Closing Date, the Borrower and its Subsidiaries have no Indebtedness except as disclosed in the financial statements referenced in Section 5.1(e) and as otherwise incurred in the ordinary course. Set forth on the Borrower's Annual Report on Form 10-K for the year ended December 31, 2014

and the Borrower's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 is a specific description of all material Off Balance Sheet Indebtedness of the Borrower and its Subsidiaries as of the periods covered thereby.

#### **6.9 Litigation.**

Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2014, in the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2015 and in any current report on Form 8-K filed by the Borrower between December 31, 2014 and the Closing Date, there are no actions, suits or legal, equitable, arbitration or administrative proceedings, pending or, to the knowledge of the Borrower, threatened against the Borrower or a Significant Subsidiary, in which there is a reasonable possibility of an adverse decision which has had or would be reasonably expected to have a Material Adverse Effect.

#### **6.10 [Reserved]**

#### **6.11 Taxes.**

The Borrower has filed, or caused to be filed, all tax returns (federal, state, local and foreign) required to be filed and paid all amounts of taxes shown thereon to be due (including interest and penalties) and has paid all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes or returns (a) which are not yet delinquent, (b) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP or (c) which are not, either individually or in the aggregate, considered material. The Borrower is not aware of any proposed material tax assessments against it.

#### **6.12 Compliance with Law.**

The Borrower is in compliance with all laws, rules, regulations, orders and decrees applicable to it, or to its properties, unless (a) such failure to comply would not have a Material Adverse Effect, or (b) the necessity of compliance therewith is being contested in good faith and by proper proceedings.

#### **6.13 ERISA.**

There have been no ERISA Events that are continuing and either singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower each Pension Plan has been administered with the applicable provisions of ERISA and the Code, and there are no pending, or to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by a Governmental Authority, with respect to any Pension Plan (other than claims for benefits and funding obligations in the ordinary course and PBGC premiums due but not delinquent), except where such non-compliance, claim, lawsuit or action either singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No termination of a Pension Plan has occurred, and no Lien in favor of the PBGC or a Pension Plan has arisen, which would reasonably be expected to have a Material Adverse Effect. The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by an amount that could reasonably be expected to have a Material Adverse Effect. The Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules with respect to each Pension Plan except where the failure to meet such requirements would not reasonably be expected to have a Material Adverse Effect. Neither the Borrower

nor any ERISA Affiliate has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

**6.14 Use of Proceeds; Margin Stock.**

The proceeds of the Revolving Loans and the issuance of any Letter of Credit hereunder (a) will be used solely for the purposes specified in Section 7.9 and (b) will not be used in a manner that would cause a violation of Regulation U or Regulation X.

**6.15 Investment Company Act.**

The Borrower is not an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended, or controlled by such a company.

**6.16 Solvency.**

The Borrower is solvent. For purposes of the preceding sentence, “solvent” means (a) the fair saleable value (on a going concern basis) of the Borrower’s assets exceed its liabilities, contingent or otherwise, fairly valued, (b) the Borrower will be able to pay its debts as they become due and (c) upon paying its debts as they become due, the Borrower will not be left with unreasonably small capital as is necessary to satisfy all of its current and reasonably anticipated obligations.

**6.17 OFAC.**

Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower and its Subsidiaries, any director, officer or employee thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s List of Specially Designated Nationals or HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List or (iii) located, organized or resident in a Designated Jurisdiction.

**6.18 Anti-Corruption Laws.**

To the extent applicable, the Borrower and each of its Subsidiaries conducts its businesses in compliance, in all material respects, with the United States Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010 and maintains policies and procedures designed to promote and achieve compliance with such laws.

**SECTION 7.**

**AFFIRMATIVE COVENANTS**

The Borrower hereby covenants and agrees that so long as this Credit Agreement is in effect and any Letter of Credit shall remain outstanding and until the Revolving Loans, together with interest, fees and other obligations hereunder (other than contingent indemnification obligations not yet due and payable), have been paid in full and the Revolving Loan Commitment hereunder shall have terminated:

**7.1 Information Covenants.**

The Borrower will furnish, or cause to be furnished, to the Lender:



(a) Annual Financial Statements. As soon as available, and in any event within 120 days after the close of each fiscal year of the Borrower, a consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of the end of such fiscal year, together with related statements of operations and retained earnings and of cash flows for such fiscal year, setting forth in comparative form figures for the preceding fiscal year, all such financial information described above to be in reasonable form and detail and audited by independent certified public accountants of recognized national standing reasonably acceptable to the Lender and whose opinion shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur) and shall not be limited as to the scope of the audit or qualified as to going concern. To the extent that the information set forth in this Section 7.1(a) is included in the Borrower's annual report on Form 10-K as filed with the Securities and Exchange Commission, such information shall be deemed delivered for purposes hereof.

(b) Quarterly Financial Statements. As soon as available, and in any event within 55 days after the close of each fiscal quarter of the Borrower (other than the fourth fiscal quarter) a consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of the end of such fiscal quarter, together with related statements of operations and retained earnings and of cash flows for such fiscal quarter in each case setting forth in comparative form figures for the corresponding period of the preceding fiscal year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Lender, and accompanied by a certificate of the chief financial officer of the Borrower to the effect that such quarterly financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments. To the extent that the information set forth in this Section 7.1(b) is included in the Borrower's quarterly report on Form 10-Q as filed with the Securities and Exchange Commission, such information shall be deemed delivered for purposes hereof.

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(a) and 7.1(b) above, a certificate of the chief financial officer, treasurer or any assistant treasurer of the Borrower, substantially in the form of Exhibit 7.1(c), (i) demonstrating compliance with the financial covenant contained in Section 7.11 by calculation thereof as of the end of each such fiscal period and (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto.

(d) Notices. Upon a Responsible Officer of the Borrower obtaining knowledge thereof, the Borrower will give written notice to the Lender as soon as administratively practicable of (i) the occurrence of an event or condition consisting of a Default or Event of Default, specifying the nature and existence thereof and what action the Borrower proposes to take with respect thereto, and (ii) the occurrence of any of the following with respect to the Borrower: (A) the pendency or commencement of any litigation, arbitral or governmental proceeding against the Borrower which, if adversely determined, is likely to have a Material Adverse Effect, (B) the institution of any proceedings against the Borrower with respect to, or the receipt of notice by the Borrower of potential liability or responsibility for, violation or alleged violation of any federal, state or local law, rule or regulation, the violation of which would likely have a Material Adverse Effect or (C) any notice concerning the imposition of any withdrawal liability by a Multiemployer Plan against the Borrower or any of its ERISA Affiliates or the termination of any Pension Plan in a distress termination.

(e) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Borrower as the Lender may reasonably request.

Documents required to be delivered pursuant to Section 7.1 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which the Lender has access; provided that: the Borrower shall deliver paper copies of such documents to the Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Lender.

## **7.2 Preservation of Existence and Franchises.**

The Borrower will, except as permitted by Section 8.2, do all things necessary to preserve and keep in full force and effect its existence, rights, franchises and authority.

## **7.3 Books and Records.**

The Borrower will keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

## **7.4 Compliance with Law.**

The Borrower will comply with all laws, rules, regulations, orders and decrees, and all restrictions imposed by all Governmental Authorities, applicable to it and its property (a) if noncompliance with any such law, rule, regulation, order or restriction would be reasonably expected to have a Material Adverse Effect or (b) unless the necessity of compliance therewith is being contested in good faith and by proper proceedings.

## **7.5 Payment of Taxes.**

The Borrower will pay and discharge all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent; provided, however, that the Borrower shall not be required to pay (a) any such tax, assessment, charge, levy, or claim which is being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been established in accordance with GAAP or (b) any such taxes which are not, either individually or in the aggregate, considered material.

## **7.6 Insurance.**

The Borrower will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice.

### **7.7 Performance of Obligations.**

The Borrower will perform in all material respects all of its obligations under the terms of all material agreements to which it is a party or by which it is bound (other than agreements, indentures, mortgages, security agreements or other instruments relating to Indebtedness) unless (i) Borrower's nonperformance of any such agreement would not reasonably be expected to have a Material Adverse Effect or (ii) the necessity of performance thereof is being contested in good faith and by proper proceedings.

### **7.8 ERISA.**

The Borrower shall, and shall, to the extent practicable, cause each of its ERISA Affiliates to: (a) maintain each Pension Plan in compliance with the applicable provisions of ERISA, the Code and other applicable federal or state law; and (b) make all required contributions to any Pension Plan subject to Section 412 or Section 430 of the Code and all contributions required of the Borrower and its ERISA Affiliates to any Multiemployer Plan subject to Section 431 of the Code; except in each such instance in clause (a) or (b) where the failure to do so, either singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

### **7.9 Use of Proceeds.**

The proceeds of the Revolving Loans and Letters of Credit may be used solely (a) to provide credit support for the Borrower's commercial paper program (including SCFC Notes), (b) for working capital for the Borrower, (c) to provide credit support for tax exempt pollution control bond issuances and (d) for other general corporate purposes, including, without limitation, acquisitions.

### **7.10 Audits/Inspections.**

Upon reasonable notice and during normal business hours, the Borrower will permit representatives appointed by the Lender, including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect the Borrower's property, including its books and records, its accounts receivable and inventory, the Borrower's facilities and its other business assets, and to make photocopies or photographs thereof and to write down and record any information such representative obtains and shall permit the Lender or its representatives to investigate and verify the accuracy of information provided to the Lender and to discuss all such matters with the officers, employees and representatives of the Borrower. So long as there is not a Default or Event of Default or unless Borrower otherwise consents, such visits and inspections shall be limited to once per calendar year.

### **7.11 Indebtedness to Capitalization.**

The ratio of (a) Indebtedness of the Borrower and its consolidated Subsidiaries to (b) Capitalization shall at all times be less than or equal to .65 to 1.0.

## **SECTION 8.**

### **NEGATIVE COVENANTS**

The Borrower hereby covenants and agrees that so long as this Credit Agreement is in effect and any Letter of Credit remains outstanding and until the Revolving Loans, together with interest, fees and other obligations hereunder (other than contingent indemnification obligations not yet due and payable), have been paid in full and the Revolving Loan Commitment hereunder shall have terminated:

### **8.1 Nature of Business.**

The Borrower will not alter the character of its business from that conducted as of the Closing Date.

### **8.2 Consolidation and Merger.**

The Borrower will not enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); provided that notwithstanding the foregoing provisions of this Section 8.2, the following actions may be taken if after giving effect thereto no Default or Event of Default exists:

(a) a Subsidiary of the Borrower may be merged or consolidated with or into the Borrower; provided that the Borrower shall be the continuing or surviving corporation; and

(b) the Borrower may merge or consolidate with any other Person (other than one of its Subsidiaries) if either (i) the Borrower shall be the continuing or surviving corporation or (ii) the Borrower shall not be the continuing or surviving corporation and the corporation so continuing or surviving (A) is a corporation organized and duly existing under the law of any state of the United States, (B) has (1) a long term, senior, unsecured, non-credit enhanced debt rating of BBB- or better from S&P and Baa3 or better from Moody's or (2) a commercial paper rating of A-2 or better from S&P and P-2 or better from Moody's and (C) executes and delivers to the Lender an instrument in form reasonably satisfactory to the Lender pursuant to which it expressly assumes the Revolving Loans and all of the other obligations of the Borrower under the Credit Documents and procures for the Lender an opinion in form reasonably satisfactory to the Lender in respect of the due authorization, execution, delivery and enforceability of such instrument and covering such other matters as the Lender may reasonably request; provided that prior to any such merger or consolidation, the Borrower shall have delivered to the Lender a certificate demonstrating that, upon giving effect to such merger or consolidation on a pro forma basis, the Borrower will be in compliance with Section 7.11.

### **8.3 Sale or Lease of Assets.**

Except as permitted by Section 8.2, the Borrower will not convey, sell, lease, transfer or otherwise dispose of in one transaction or a series of transactions, all or substantially all of its business or assets whether now owned or hereafter acquired.

### **8.4 Transactions with Affiliates.**

Except as otherwise required by law, the Borrower will not enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any of its Affiliates other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an Affiliate.

### **8.5 Fiscal Year.**

The Borrower will not change its fiscal year (a) without prior written notification to the Lender and (b) if such change would materially affect the Lender's ability to read and interpret the financial statements delivered pursuant to Section 7.1 or calculate the financial covenant in Section 7.11.



## 8.6 Liens.

The Borrower will not contract, create, incur, assume or permit to exist any Lien with respect to any of its property or assets of any kind (whether real or personal, tangible or intangible), whether now owned or hereafter acquired, securing any Indebtedness unless the Revolving Loans hereunder are equally and ratably secured with such other Indebtedness other than the following: (a) Liens securing Borrower Obligations, (b) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (c) Liens in respect of property imposed by law arising in the ordinary course of business such as materialmen's, mechanics', warehousemen's, carrier's, landlords' and other nonconsensual statutory Liens which are not yet due and payable, which have been in existence less than 90 days or which are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (d) pledges or deposits made in the ordinary course of business to secure payment of worker's compensation insurance, unemployment insurance, pensions or social security programs, other than any Lien imposed by ERISA, (e) Liens arising from good faith deposits in connection with or to secure performance of tenders, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (other than obligations in respect of the payment of borrowed money), (f) Liens arising from good faith deposits in connection with or to secure performance of statutory obligations and surety and appeal bonds (unless such Lien is in connection with a judgment that has caused an Event of Default pursuant to Section 9.1(g)), (g) easements, rights-of-way, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances not, in any material respect, impairing the use of the encumbered property for its intended purposes, (h) judgment Liens that would not constitute an Event of Default, (i) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights as to deposit accounts or other funds maintained with a creditor depository institution, (j) any Lien created or arising over any property which is acquired, constructed or created by the Borrower, but only if (i) such Lien secures only principal amounts (not exceeding the cost of such acquisition, construction or creation) raised for the purposes of such acquisition, construction or creation, together with any costs, expenses, interest and fees incurred in relation thereto or a guarantee given in respect thereof, (ii) such Lien is created or arises on or before 360 days after the completion of such acquisition, construction or creation and (iii) such Lien is confined solely to the property so acquired, constructed or created and any improvements thereto, (k) any Lien on any property or assets acquired from a corporation or other entity which is merged with or into the Borrower in accordance with Section 8.2, and is not created in anticipation of any such transaction (unless such Lien is created to secure or provide for the payment of any part of the purchase price of such corporation or other entity), (l) any Lien on any property or assets existing at the time of acquisition of such property or assets by the Borrower and which is not created in anticipation of such acquisition (unless such Lien was created to secure or provide for the payment of any part of the purchase price of such property or assets), (m) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Liens referred to in the foregoing clauses (a) through (l), for amounts not exceeding the principal amount of the Indebtedness secured by the Lien so extended, renewed or replaced, provided that such extension, renewal or replacement Lien is limited to all or a part of the same property or assets that were covered by the Lien extended, renewed or replaced (plus improvements on such property or assets) and (n) Liens on property, in addition to those otherwise permitted by clauses (a) through (m) above, securing, directly or indirectly, Indebtedness which does not exceed, in the aggregate at any one time outstanding, the greater of (i) \$100,000,000.00 or (ii) ten percent (10%) of Net Tangible Assets.

## **8.7 Sanctions.**

The Borrower shall not, directly or, to the knowledge of the Borrower, indirectly, use any Revolving Loans or the proceeds of any Revolving Loans, or lend, contribute or otherwise make available such Revolving Loans or the proceeds of any Revolving Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will, to the knowledge of the Borrower, result in a violation by any Person (including any Person participating in the transaction, whether as Lender or otherwise) of Sanctions.

## **8.8 Anti-Corruption Laws.**

The Borrower shall not, directly or indirectly, use the proceeds of any Revolving Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977 or the UK Bribery Act 2010.

# **SECTION 9.**

## **EVENTS OF DEFAULT**

### **9.1 Events of Default.**

An Event of Default shall exist upon the occurrence of any of the following specified events (each an “Event of Default”):

(a) Payment. The Borrower shall:

(i) default in the payment when due of any principal of any of the Revolving Loans; or

(ii) default in reimbursement of the Lender for any L/C Obligations when due; or

(iii) default, and such default shall continue for five or more Business Days, in the payment when due of any interest on the Revolving Loans or of any fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith.

(b) Representations. Any representation, warranty or statement made or deemed to be made by the Borrower herein, in any of the other Credit Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made; provided, however, that if such untrue representation, warranty or statement is capable of being remedied, it shall not be an Event of Default if the Borrower remedies such untrue representation, warranty or statement within ten (10) Business Days of any Responsible Officer of the Borrower obtaining actual knowledge thereof.

(c) Covenants. The Borrower shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.2, 7.3, 7.4, 7.9, 7.11 or 8.1 through 8.8, inclusive; or

(ii) default in the due performance or observance by it of any term, covenant or agreement contained in Section 7.1(a), (b), (c) or (d) and such default shall continue unremedied for a period of ten Business Days after the earlier of an officer of the Borrower becoming aware of such default or written notice thereof given by the Lender; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b), (c)(i) or (c)(ii) of this Section 9.1) contained in this Credit Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 days after the earlier of an officer of the Borrower becoming aware of such default or written notice thereof given by the Lender.

(d) Credit Documents. Any Credit Document shall fail to be in full force and effect or to give the Lender the rights, powers and privileges purported to be created thereby.

(e) Bankruptcy, etc. The occurrence of any of the following with respect to the Borrower or a Significant Subsidiary: (i) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower or a Significant Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or a Significant Subsidiary or for any substantial part of its property or ordering the winding up or liquidation of its affairs; or (ii) an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect is commenced against the Borrower or a Significant Subsidiary and such petition remains unstayed and in effect for a period of 60 consecutive days; or (iii) the Borrower or a Significant Subsidiary shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or any substantial part of its property or make any general assignment for the benefit of creditors; or (iv) the Borrower or a Significant Subsidiary shall admit in writing its inability to pay its debts generally as they become due or any action shall be taken by such Person in furtherance of any of the aforesaid purposes.

(f) Defaults under Other Agreements. With respect to any Indebtedness (other than the Indebtedness under this Credit Agreement) of the Borrower or a Significant Subsidiary in a principal amount in excess of \$100,000,000, (i) the Borrower or such Significant Subsidiary shall (A) default in any payment (interest or principal) (beyond the applicable grace period with respect thereto, if any) with respect to any such Indebtedness, or (B) default (after giving effect to any applicable grace period) in the observance or performance of any covenant or agreement relating to such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default pursuant to this clause (B) or other event or condition is to cause, any such Indebtedness to become immediately due and payable; or (ii) any such Indebtedness shall be declared due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or (iii) any such Indebtedness matures and remains unpaid.

(g) Judgments. One or more judgments, orders, or decrees shall be entered against the Borrower or a Significant Subsidiary involving a liability of \$100,000,000 or more, in the aggregate, (to the extent not paid or covered by insurance provided by a carrier who has

acknowledged coverage) and such judgments, orders or decrees shall continue unsatisfied, undischarged and unstayed for a period of at least 30 days after the last day on which such judgment, order or decree becomes final and unappealable and, where applicable, with the status of a judicial lien.

(h) ERISA. (i) An ERISA Event occurs which is continuing and has resulted or would reasonably be expected to result in liability of the Borrower or any ERISA Affiliate in an aggregate amount in excess of \$100,000,000, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$100,000,000; or

(i) Change of Control. The occurrence of any Change of Control.

## **9.2 Acceleration; Remedies.**

Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by the Lender or cured to the satisfaction of the Lender, the Lender may, by written notice to the Borrower, take any of the following actions without prejudice to the rights of the Lender to enforce its claims against the Borrower, except as otherwise specifically provided for herein:

(i) Termination of Revolving Loan Commitment. Declare the Revolving Loan Commitment and the obligation of the Lender to make L/C Credit Extensions terminated whereupon the Revolving Loan Commitment and the obligation of the Lender to make L/C Credit Extensions shall be immediately terminated.

(ii) Acceleration of Revolving Loans. Declare the unpaid principal of and any accrued interest in respect of all Revolving Loans, all L/C Obligations and any and all other indebtedness or obligations of any and every kind owing by the Borrower to the Lender hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

(iii) Cash Collateralize L/C Obligations. Direct the Borrower to Cash Collateralize (and the Borrower agrees that upon receipt of such notice, or upon the occurrence of an Event of Default under Section 9.1(e), it will immediately Cash Collateralize) all outstanding L/C Obligations.

(iv) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Credit Documents, including, without limitation, all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(e) shall occur, then (a) the Revolving Loan Commitment shall automatically terminate, (b) all Revolving Loans, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Lender hereunder shall immediately become due and payable and (c) the Borrower shall Cash Collateralize the L/C Obligations, without the giving of any notice or other action by the Lender.



### **9.3 Allocation of Payments after Event of Default.**

Notwithstanding any other provisions of this Credit Agreement, after the exercise of any remedies by the Lender pursuant to Section 9.2 (or after the Revolving Loan Commitment shall automatically terminate and the Revolving Loans (with accrued interest thereon) and all other amounts under the Credit Documents shall automatically become due and payable in accordance with the terms of such Section), all amounts collected or received by the Lender on account of amounts outstanding under any of the Credit Documents shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Lender in connection with enforcing the rights of the Lender under the Credit Documents;

SECOND, to payment of any fees (other than Letter of Credit Fees) owed to the Lender;

THIRD, to the payment of all accrued Letter of Credit Fees and interest payable on the Revolving Loans, L/C Borrowings and other Borrower Obligations to the Lender hereunder;

FOURTH, to the payment of the outstanding principal amount of the Revolving Loans, L/C Borrowings and all other Borrower Obligations which shall have become due and payable under the Credit Documents;

FIFTH, to the Lender, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

SIXTH, the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category.

Subject to Section 2.2(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Borrower Obligations, if any, in the order set forth above.

## **SECTION 10.**

### **[RESERVED]**

## **SECTION 11.**

### **MISCELLANEOUS**

#### **11.1 Notices and other Communications; Facsimile Copies.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or electronic communication, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or

overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.1.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Lender. The Borrower and the Lender hereby agree to accept notices and other communications to it hereunder by electronic communications pursuant to the procedures in this Section 11.1.

Unless the parties agree otherwise, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) Change of Address, Etc. Each of the Borrower and the Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto.

(c) Reliance by Lender. The Lender shall be entitled to rely and act upon any notices given by the Borrower even if such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein. All telephonic notices to and other communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

## **11.2 Right of Set-Off.**

In addition to any rights now or hereafter granted under applicable Law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default and the commencement of remedies described in Section 9.2, the Lender is authorized at any time and from time to time, without presentment, demand, protest or other notice of any kind (all of which rights being hereby expressly waived), to set-off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by the Lender (including, without limitation branches, agencies or Affiliates of the Lender wherever located) to or for the credit or the account of the Borrower against obligations and liabilities of the Borrower to the Lender hereunder, under any Note, the other Credit Documents or otherwise, irrespective of whether the Lender shall have made any demand hereunder and although such obligations, liabilities or claims, or any of them, may be contingent or unmatured, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of the Lender subsequent thereto. The

Borrower hereby agrees that any Participation Purchaser may exercise all rights of set-off with respect to its participation interest as fully as if such Person were a Lender hereunder.

### **11.3 Benefit of Agreement.**

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that, other than as permitted by Section 8.2, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender.

(b) The Lender may at any time assign to an Eligible Assignees (subject to the consent of the Borrower as set forth in the definition thereof) all of its rights and obligations under this Credit Agreement (including all of the Revolving Loan Commitment and the Revolving Loans (including for purposes of this subsection (b) L/C Obligations) at the time owing to it). From and after the effective date specified in each agreement by which such assignment and assumption is effected, the Eligible Assignee thereunder shall be a party to this Credit Agreement and have the rights and obligations of the Lender under this Credit Agreement, and the assigning Lender thereunder shall be released from its obligations under this Credit Agreement and the other Credit Documents and shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 4.1 through 4.4 and 11.5 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by the Lender of rights or obligations under this Credit Agreement that does not comply with this subsection shall be null and void.

(c) The Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participation Purchaser") in all or a portion of the Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Revolving Loan Commitment and/or the Revolving Loans (including the Lender's participations in L/C Obligations) owing to it); provided that (i) the Lender's obligations under this Credit Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the Borrower for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Credit Agreement. Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that the Lender will not, without the consent of the Participation Purchaser, agree to any amendment, waiver or other modification described in Section 11.6 that directly affects such Participation Purchaser. Subject to subsection (c) of this Section, the Borrower agrees that each Participation Purchaser shall be entitled to the benefits of Sections 4.1 through 4.4 to the same extent as if it were a Lender. To the extent permitted by law, each Participation Purchaser also shall be entitled to the benefits of Section 11.2 as though it were a Lender, provided such Participation Purchaser agrees to be subject to Section 3.8 as though it were a Lender.

(d) A Participation Purchaser shall not be entitled to receive any greater payment under Section 4.2 or 4.4 than the Lender would have been entitled to receive with respect to the participation sold to such Participation Purchaser, unless the sale of the participation to such Participation Purchaser is made with the Borrower's prior written consent. A Participation Purchaser that would be a "foreign corporation, partnership or trust" within the meaning of the

Code if it were the Lender shall not be entitled to the benefits of Section 4.4 unless the Borrower is notified of the participation sold to such Participation Purchaser and such Participation Purchaser agrees, for the benefit of the Borrower, to comply with Section 4.4(d) as though it were a Lender.

(e) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under the Note, if any) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

#### **11.4 No Waiver; Remedies Cumulative.**

No failure or delay on the part of the Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower and the Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Lender would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Lender to any other or further action in any circumstances without notice or demand.

#### **11.5 Payment of Expenses, etc.**

The Borrower agrees to: (i) pay all reasonable out-of-pocket costs and expenses of (A) the Lender in connection with the negotiation, preparation, execution, delivery and administration of this Credit Agreement and the other Credit Documents and the documents and instruments referred to therein (including, without limitation, the reasonable fees and expenses of a single special counsel to the Lender) and any amendment, waiver, consent or assignment relating hereto and thereto including, but not limited to, any such amendments, waivers or consents resulting from or related to any work-out, renegotiation or restructure relating to the performance by the Borrower under this Credit Agreement, (B) the Lender in connection with enforcement of the Credit Documents and the documents and instruments referred to therein and any reasonable expenses incurred in connection with any work-out, renegotiation or restructure relating to the performance by the Borrower under this Credit Agreement (including, without limitation, in connection with any such enforcement, the reasonable fees and disbursements of counsel for the Lender) and (C) the Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (ii) indemnify the Lender and its Affiliates and its and their respective directors, officers, employees, counsel, agents, representatives and attorneys-in-fact from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not the Lender is a party thereto) related to the entering into and/or performance of any Credit Document or the use of proceeds of any Revolving Loans (including other extensions of credit) or Letter of Credit hereunder or the consummation of any other transactions contemplated in any Credit Document (including any refusal by the Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding; provided that the Borrower shall not be responsible for any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of gross negligence or willful



misconduct on the part of the Person to be indemnified, in each case as found by a final, non-appealable judgment of a court of competent jurisdiction; and provided further that in no event shall the Borrower have any liability with respect to the settlement or compromise of any claim or proceeding effected without its prior written consent nor shall the Borrower be liable for the fees and disbursements of more than one firm of attorneys in connection with the same matter in the same jurisdiction for all Persons indemnified. The agreements in this Section 11.5 shall survive the repayment of the Borrower Obligations and the termination of the Revolving Loan Commitment.

**11.6 Amendments, Waivers and Consents.**

Neither this Credit Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing and signed by the Lender and the Borrower.

**11.7 Counterparts; Telecopy.**

This Credit Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Credit Agreement to produce or account for more than one such counterpart. Delivery of executed counterparts by telecopy shall be as effective as an original and shall constitute a representation that an original will be delivered.

**11.8 Headings.**

The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

**11.9 [Reserved].**

**11.10 Survival of Indemnification and Representations and Warranties.**

All indemnities set forth herein and all representations and warranties made herein shall survive the execution and delivery of this Credit Agreement, the making of the Revolving Loans, and the repayment of the Revolving Loans and other obligations and the termination of the Revolving Loan Commitment hereunder.

**11.11 Governing Law; Jurisdiction.**

(a) THIS CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE PARTIES HERETO CONSENT TO SUCH GOVERNANCE, CONSTRUCTION AND INTERPRETATION UNDER THE LAWS OF THE STATE OF NEW YORK.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY,

WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER OR ANY RELATED PARTY OF THE LENDER IN ANY WAY RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING IN THIS CREDIT AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN THE COURTS OF ANY JURISDICTION.

**11.12 Waiver of Jury Trial; Waiver of Consequential Damages.**

EACH OF THE PARTIES TO THIS CREDIT AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT, ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. The Borrower agrees that the Lender, any of its Affiliates and its and their respective officers, directors, employees, representatives, agents and attorneys-in-fact (each, an "Indemnified Party") shall not have any liability for any indirect or consequential damages arising out of, related to or in connection with the Credit Documents except to the extent such damages were caused by reason of gross negligence or willful misconduct on the part of such Indemnified Party.

**11.13 Time.**

All references to time herein shall be references to Eastern Standard Time or Eastern Daylight time, as the case may be, unless specified otherwise.

**11.14 Severability.**

If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

**11.15 Entirety.**

This Credit Agreement together with the other Credit Documents represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

#### **11.16 Confidentiality.**

The Lender agrees that it will use its reasonable best efforts to keep confidential and to cause any representative designated under Section 7.10 to keep confidential any non-public information from time to time supplied to it under or in connection with any Credit Document including, without limitation, any such information furnished to the Lender prior to or in connection with its entry into any Credit Document (the “Information”); provided, however, that nothing herein shall affect the disclosure of any such Information to (a) the extent the Lender in good faith believes such disclosure is required by statute, rule, regulation or judicial process or applicable Law or by subpoena or similar legal process, (b) the extent requested by any regulatory authority having jurisdiction over the Lender or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners) which has been notified of the confidential nature of such Information, (c) counsel for the Lender or to its accountants, (d) bank examiners or auditors or comparable Persons, (e) any Affiliate of the Lender, (f) (i) any participant or any direct contractual counterparties to any swap or derivative transaction relating to Borrower and its obligations or (ii) any potential participant of all or any portion of the Lender’s rights under this Credit Agreement, in each case who is notified of the confidential nature of the Information and agrees to be bound by this provision or provisions reasonably comparable hereto, (g) any other Person in connection with any litigation to which the Lender is a party, (h) to any credit insurance provider relating to the Borrower and its obligations, (i) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Credit Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder or (j) with the consent of the Borrower; and provided further that the Lender shall have no obligation under this Section 11.16 to the extent any such Information becomes available on a non-confidential basis from a source other than the Borrower or its Subsidiaries or that any Information becomes publicly available other than by a breach of this Section 11.16. The Lender agrees it will use all confidential Information exclusively for the purpose of evaluating, monitoring, selling, protecting or enforcing its Revolving Loans and other rights under the Credit Documents.

#### **11.17 Binding Effect.**

(a) This Credit Agreement shall become effective when it shall have been executed by the Borrower and the Lender and thereafter this Credit Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender, together with their respective successors and assigns. Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the indemnified parties hereunder) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Revolving Loans, interest, fees and other Borrower Obligations have been paid in full and the Revolving Loan Commitment and Letters of Credit have been terminated. Upon termination, the Borrower shall have no further obligations (other than the indemnification provisions that survive) under the Credit Documents; provided that should any payment, in whole or in part, of the Borrower Obligations be rescinded or otherwise required to be restored or returned by the Lender, whether as a result of any proceedings in bankruptcy or pursuant to court order, then the Credit Documents shall automatically be reinstated and all amounts required to be restored or returned and all costs and expenses incurred by the Lender in connection therewith shall be deemed included as part of the Borrower Obligations.

#### **11.18 USA Patriot Act Notice.**

The Lender, to the extent that it is subject to the Act (as hereinafter defined), hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower and each of its Subsidiaries shall provide such information and take such actions as are reasonably requested by the Lender in order to assist the Lender in maintaining compliance with the Act.

#### **11.19 No Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the services regarding this Credit Agreement provided by the Lender are arm’s-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lender on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) the Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its respective Affiliates, or any other Person and (B) the Lender has no obligation to the Borrower or any of its respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (iii) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and the Lender has no obligation to disclose any of such interests to the Borrower and its respective Affiliates. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

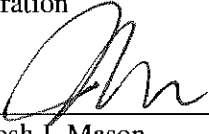
**[the remainder of this page intentionally left blank]**



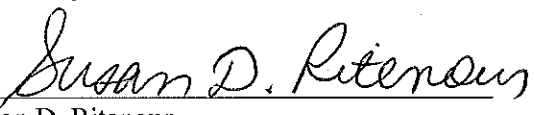
Each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

**BORROWER:**

**GULF POWER COMPANY**, a Florida  
corporation

By:   
Josh J. Mason  
Assistant Treasurer

Attested to by:

By:   
Susan D. Ritenour  
Secretary and Treasurer

**LENDER:**

**U.S. BANK NATIONAL ASSOCIATION**, in its  
capacity as Lender

By: MTB

Name: Michael T. Sagges

Title: Vice President

## FORM OF NOTICE OF BORROWING OF REVOLVING LOAN

TO: U.S. Bank National Association, as Lender

RE: Amended and Restated Credit Agreement dated as of November 13, 2015 between Gulf Power Company (the "Borrower") and U.S. Bank National Association, as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

---

1. This Notice of Borrowing is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.
2. Please be advised that the Borrower is requesting Revolving Loans in the amount of \$\_\_\_\_\_ to be funded on \_\_\_\_\_, 20\_\_ at the interest rate option set forth in paragraph 3 below.

Subsequent to the funding of the requested Revolving Loans, the aggregate amount of Revolving Loans outstanding will be \$\_\_\_\_\_ which is less than or equal to the Revolving Loan Commitment.

3. The interest rate option applicable to the requested Revolving Loans shall be:
  - a. \_\_\_\_\_ the Adjusted Base Rate
  - b. \_\_\_\_\_ the Adjusted Eurodollar Rate for an Interest Period of:
    - \_\_\_\_\_ one month
    - \_\_\_\_\_ two months
    - \_\_\_\_\_ three months
    - \_\_\_\_\_ six months

4. Unless notification to the contrary is received by the Lender prior to the date on which funds are to be advanced, as of the date on which funds are to be advanced, all representations and warranties required to be made pursuant to the Credit Agreement and the other Credit Documents will be true and correct in all material respects.
5. Unless notification to the contrary is received by the Lender prior to the date on which funds are to be advanced, as of the date on which funds are to be advanced, no Default or Event of Default will have occurred and be continuing or will be caused by this Notice of Borrowing.
6. Please credit the following account with the Revolving Loans requested pursuant to this Notice of Borrowing:

Bank: [                      ]

[                    ]  
ABA #: [                    ]  
Acct #: [                    ]  
Account Name: [                    ]

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## FORM OF NOTICE OF CONTINUATION/CONVERSION

TO: U.S. Bank National Association, as Lender

RE: Amended and Restated Credit Agreement dated as of November 13, 2015 between Gulf Power Company (the "Borrower") and U.S. Bank National Association, as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

---

1. This Notice of Continuation/Conversion is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.
2. Please be advised that the Borrower is requesting that a portion of the current outstanding Revolving Loans in the amount of \$\_\_\_\_\_ currently accruing interest at \_\_\_\_\_ be continued or converted as of \_\_\_\_\_, 20\_\_ at the interest rate option set forth in paragraph 3 below.
3. The interest rate option applicable to the continuation or conversion of all or part of the existing Revolving Loans (as set forth above) shall be:
  - a. \_\_\_\_\_ the Adjusted Base Rate
  - b. \_\_\_\_\_ the Adjusted Eurodollar Rate for an Interest Period of:
    - \_\_\_\_\_ one month
    - \_\_\_\_\_ two months
    - \_\_\_\_\_ three months
    - \_\_\_\_\_ six months
4. Unless notification to the contrary is received by the Lender prior to the date on which Revolving Loans are to be continued or converted, as of the date on which Revolving Loans are to be continued or converted, all representations and warranties required to be made pursuant to the Credit Agreement and the other Credit Documents will be true and correct in all material respects.
5. Unless notification to the contrary is received by the Lender prior to the date on which Revolving Loans are to be continued or converted, as of the date on which Revolving Loans are to be continued or converted, no Default or Event of Default will have occurred and be continuing or will be caused by this Notice of Continuation/Conversion.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FORM OF  
NOTE

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, GULF POWER COMPANY, a Florida corporation (the "Borrower"), hereby promises to pay to the order of U.S. Bank National Association (the "Lender"), at the Lender's office as set forth in that certain Amended and Restated Credit Agreement dated as of November 13, 2015 between the Borrower and the Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement") (or at such other place or places as the holder of this Note may designate), the aggregate amount of all advances made by the Lender as Revolving Loans pursuant to the Lender's Commitment (and not otherwise repaid), in lawful money and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each Revolving Loan made by the Lender, at such office, in like money and funds, for the period commencing on the date of each Revolving Loan until each Revolving Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Note is the Note referred to in the Credit Agreement and evidences Revolving Loans made by the Lender thereunder. The Lender shall be entitled to the benefits of the Credit Agreement. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement and the terms and conditions of the Credit Agreement are expressly incorporated herein and made a part hereof.

The Credit Agreement provides for the acceleration of the maturity of the Revolving Loans evidenced by this Note upon the occurrence of certain events (and for payment of collection costs in connection therewith) and for prepayments of Revolving Loans upon the terms and conditions specified therein. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to the principal and interest, all costs of collection, including reasonable attorney fees.

This Note may not be assigned by the Lender to any other Person.

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed as of the date first above written.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attested to by:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## FORM OF COMPLIANCE CERTIFICATE

TO: U.S. Bank National Association, as Lender

RE: Amended and Restated Credit Agreement dated as of November 13, 2015 between Gulf Power Company (the "Borrower") and U.S. Bank National Association, as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

---

Pursuant to the terms of the Credit Agreement, I, \_\_\_\_\_, [Chief Financial Officer/ Treasurer/ Assistant Treasurer] of Gulf Power Company, hereby certify that, as of the fiscal quarter ending \_\_\_\_\_, 20\_\_, the statements and calculations below are accurate and complete in all respects (all capitalized terms used below shall have the meanings set forth in the Credit Agreement):

1. Compliance with Section 7.11:  
Ratio of Indebtedness to Capitalization

- |    |   |               |
|----|---|---------------|
| a. | Indebtedness                            | \$ _____      |
| b. | Capitalization                          | \$ _____      |
| c. | Ratio of Indebtedness to Capitalization | _____ : _____ |

Maximum Allowed: .65 : 1.0.

2. No Default or Event of Default exists except as indicated on a separate page attached hereto, together with an explanation of the action taken or proposed to be taken by the Borrower with respect thereto.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PLACE AND MANNER OF PAYMENTS

All payments of principal, interest, fees, expenses and other amounts to be made by Borrower under this Agreement shall be made to the Lender as follows:

Lender's Principal Office to Receive Funds:

U.S. Bank National Association  
800 Nicollet Mall  
Minneapolis, MN 55402

Wiring Instructions:

Pay to:	U.S. Bank National Association
FED ABA#:	[REDACTED]
Account Name:	Twin Cities Commercial Banking
Account Number:	[REDACTED]
Reference:	Gulf Power (type of payment, fee, interest, etc)

NOTICES

**BORROWER:**

Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0786  
Attention: Susan D. Ritenour  
Tel: (850) 444-6231  
Fax: (850) 444-6026  
Email: [sdriteno@southernco.com](mailto:sdriteno@southernco.com)

Gulf Power Company  
30 Ivan Allen Jr. Boulevard, NW  
BIN SC1407  
Atlanta, Georgia 30308  
Attention: Dave Symons  
Tel: (404) 506-0782  
Fax: (404) 506-0717  
Email: [dsymons@southernco.com](mailto:dsymons@southernco.com)

Website: <http://www.gulfpower.com>

**LENDER:**

U.S. Bank National Association  
461 Fifth Avenue  
6th Floor  
New York, NY 10017  
Attention: Maria Distefano  
Tel 917.326.3944  
Fax 917.256.2890  
Email [maria.distefano@usbank.com](mailto:maria.distefano@usbank.com)

## FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") is made effective as of November 8, 2017 (the "Effective Date"), between GULF POWER COMPANY, a Florida corporation, as borrower (the "Borrower"), and U.S. BANK NATIONAL ASSOCIATION (the "Lender").

### RECITALS

WHEREAS, the Borrower and the Lender entered into that certain Amended and Restated Credit Agreement, dated as of November 13, 2015 (the "Credit Agreement"), pursuant to which the Lender provides a revolving credit facility to the Borrower; and

WHEREAS, pursuant to Section 11.6 of the Credit Agreement, the Borrower and the Lender wish to amend the Credit Agreement to extend the Maturity Date;

NOW, THEREFORE, in consideration of the Recitals and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender, intending to be legally bound hereby, agree as follows:

SECTION 1. Definitions. All capitalized terms used, but not otherwise defined, herein, shall have the meanings assigned thereto in Section 1.1 of the Credit Agreement.

SECTION 2. Amendments. The definition of "Maturity Date" in Section 1.1 of the Credit Agreement is hereby amended by deleting the words "November 13, 2018" and inserting in their place "November 18, 2020."

SECTION 3. Conditions to Effectiveness. The effectiveness of this Amendment is subject to the satisfaction (or waiver by the Lender) of the following conditions:

(a) Executed Amendment. Receipt by the Lender of a duly executed counterpart of this Amendment by the Borrower.

(b) Legal Opinion. Receipt by the Lender of an opinion, or opinions, satisfactory to the Lender, addressed to the Lender from legal counsel to the Borrower.

(c) Officer's Certificate. Receipt by the Lender of a certificate of a Responsible Officer of the Borrower stating that, as of the Effective Date, (i) there exists no Default or Event of Default; (ii) all representations and warranties contained in the Credit Agreement (other than Sections 6.6, 6.8 and 6.9), this Amendment and the other Credit Documents are true and correct in all material respects; and (iii) the Borrower is in compliance with the financial covenant set forth in Section 7.11 of the Credit Agreement, as demonstrated by the covenant calculation on Schedule A attached thereto.

(d) Financial Statements. Receipt by the Lender of (i) the consolidated audited financial statements of the Borrower, dated as of December 31, 2016, including balance sheets and income and cash flow statements, in each case audited by independent public accountants of recognized standing and prepared in accordance with GAAP and (ii) the consolidated unaudited quarterly financial statements of the Borrower for the quarter ended September 30, 2017, including balance sheets and income and cash flow statements, in each case prepared in accordance with GAAP.



(e) Upfront Fee and Expenses. Payment by the Borrower to the Lender of (i) a fee equal to 0.10% multiplied by the Revolving Loan Commitment and (ii) all other reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution, delivery and administration of this Amendment (including, without limitation, the reasonable fees and expenses of counsel to the Lender).

(f) Material Adverse Effect. No event or condition shall have occurred since the date of the financial statements delivered pursuant to Section 3(d) above that has had or would be likely to have a Material Adverse Effect.

(g) Other. Receipt by the Lender of such other documents, instruments, agreements or information as reasonably requested by the Lender.

SECTION 4. No Other Amendment. The Credit Agreement, as amended by this Amendment, is and shall continue to be in full force and effect and is hereby in all respects ratified. This Amendment is not intended to effect, nor shall it be construed as, a novation. This Amendment shall be considered a Credit Document and the Credit Agreement and this Amendment shall be construed together as a single agreement. Nothing contained herein shall waive, annul, vary or affect any provision, condition, covenant or agreement contained in the Credit Agreement, except as herein amended, or affect or impair any rights, powers or remedies under the Credit Agreement as hereby amended. The Lender hereby reserves all of its rights and remedies against all parties who may be or may hereafter become secondarily liable for the repayment of the Revolving Loans. Each of the Borrower and the Lender reaffirms its obligations under the Credit Agreement and promises and agrees to perform all of the requirements, conditions, agreements and obligations under the terms of the Credit Agreement, as hereby amended. On and after the date of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended by this Amendment.

SECTION 5. Representations and Warranties. The Borrower hereby represents and warrants to the Lender as follows:

(a) No Default. No Default or Event of Default has occurred and is continuing unwaived in writing by the Lender on the date hereof or would be caused by entering into this Amendment.

(b) Due Authorization. The Borrower (i) has the requisite corporate power and authority to execute, deliver and perform this Amendment and to incur the obligations herein provided for and (ii) is duly authorized to, and has been authorized by all necessary corporate action to, execute, deliver and perform this Amendment.

(c) No Conflicts. Neither the execution and delivery of this Amendment, nor the consummation of the transactions contemplated herein, nor performance of and compliance with the terms and provisions hereof by the Borrower will (i) violate or conflict with any provision of its certificate or articles of incorporation or bylaws, (ii) violate, contravene or materially conflict with any law, regulation (including, without limitation, Regulation U or X), order, writ, judgment, injunction, decree or permit applicable to it, (iii) violate, contravene or materially conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which could have a Material Adverse Effect or (iv) result in or require the creation of any Lien upon or with respect to its properties.

(d) Consents. No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Amendment that has not been obtained.

(e) Enforceable Obligations. This Amendment has been duly executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

(f) Litigation. Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2016 and the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2017, or in any current report on Form 8-K filed by the Borrower between December 31, 2016 and the Effective Date, there are no actions, suits or legal, equitable, arbitration or administrative proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or a Significant Subsidiary, in which there is a reasonable possibility of an adverse decision which has or would be reasonably expected to have a Material Adverse Effect.

(g) Indebtedness and Off Balance Sheet Indebtedness. As of the date hereof, the Borrower and its Subsidiaries have no Indebtedness except as disclosed in the financial statements delivered pursuant to Section 3(d) above and as otherwise incurred in the ordinary course. Set forth in the Borrower's annual report on Form 10-K for the year ended December 31, 2016 and the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2017, is a specific description of all material Off Balance Sheet Indebtedness of the Borrower and its Subsidiaries as of the periods covered thereby.

SECTION 6. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Amendment to produce or account for more than one such counterpart. Delivery of executed counterparts by telecopy or electronic transmission shall be as effective as an original and shall constitute a representation that an original will be delivered.

SECTION 7. Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Amendment.


SECTION 8. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE PARTIES HERETO CONSENT TO SUCH GOVERNANCE, CONSTRUCTION AND INTERPRETATION UNDER THE LAWS OF THE STATE OF NEW YORK.

Gulf Power Company  
First Amendment to Credit Agreement  
with U.S. Bank National Association

Each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

**BORROWER:**

GULF POWER COMPANY, a Florida corporation

By:   
Josh J. Mason  
Assistant Treasurer


Attested to by:

By:   
Tracy G. Clark  
Assistant Secretary

Gulf Power Company  
First Amendment to Credit Agreement  
with U.S. Bank National Association

**LENDER:**

U.S. BANK NATIONAL ASSOCIATION

By:   
Name: Michael T. Sagges  
Title: Vice President



**AMENDED AND RESTATED**

**CREDIT AGREEMENT**

between

**GULF POWER COMPANY,**

as Borrower,

and

**JPMORGAN CHASE BANK, N.A.,**

as Lender

DATED AS OF November 18, 2015

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.....	1
<b>1.1 Definitions</b> .....	1
<b>1.2 Computation of Time Periods and Other Definitional Provisions</b> .....	10
<b>1.3 Accounting Terms</b> .....	11
<b>1.4 [Reserved.]</b> .....	11
<b>1.5 Rounding Rates</b> .....	11
SECTION 2. LOANS .....	12
<b>2.1 Revolving Loan Commitment</b> .....	12
<b>2.2 [Reserved]</b> .....	12
<b>2.3 Extension of Maturity Date</b> .....	12
<b>2.4 Method of Borrowing for Revolving Loans</b> .....	12
<b>2.5 Funding of Revolving Loans</b> .....	12
<b>2.6 Continuations and Conversions</b> .....	13
<b>2.7 Minimum Amounts</b> .....	13
<b>2.8 Reductions of Revolving Loan Commitment</b> .....	13
<b>2.9 Evidence of Obligations</b> .....	13
SECTION 3. PAYMENTS .....	14
<b>3.1 Interest</b> .....	14
<b>3.2 Prepayments</b> .....	14
<b>3.3 Payment in Full at Maturity</b> .....	15
<b>3.4 Fees</b> .....	15
<b>3.5 Place and Manner of Payments</b> .....	15
<b>3.6 [Reserved].</b> .....	15
<b>3.7 Computations of Interest and Fees</b> .....	15
SECTION 4. ADDITIONAL PROVISIONS REGARDING LOANS.....	16
<b>4.1 Eurodollar Loans</b> .....	16
<b>4.2 Capital Adequacy</b> .....	18
<b>4.3 Compensation</b> .....	18
<b>4.4 Taxes</b> .....	19
<b>4.5 Mitigation</b> .....	21
SECTION 5. CONDITIONS PRECEDENT .....	21
<b>5.1 Closing Conditions</b> .....	21
<b>5.2 Conditions to Loans</b> .....	22
SECTION 6. REPRESENTATIONS AND WARRANTIES .....	23
<b>6.1 Organization and Good Standing</b> .....	23
<b>6.2 Due Authorization</b> .....	23
<b>6.3 No Conflicts</b> .....	23
<b>6.4 Consents</b> .....	23
<b>6.5 Enforceable Obligations</b> .....	24
<b>6.6 Financial Condition</b> .....	24
<b>6.7 No Default</b> .....	24
<b>6.8 Indebtedness and Off Balance Sheet Indebtedness</b> .....	24

6.9	Litigation.....	24
6.10	[Reserved].....	24
6.11	Taxes .....	24
6.12	Compliance with Law .....	25
6.13	ERISA .....	25
6.14	Use of Proceeds; Margin Stock.....	25
6.15	Investment Company Act.....	25
6.16	Solvency .....	25
6.17	OFAC .....	26
6.18	Anti-Corruption Laws.....	26
SECTION 7. AFFIRMATIVE COVENANTS.....		26
7.1	Information Covenants.....	26
7.2	Preservation of Existence and Franchises .....	27
7.3	Books and Records.....	28
7.4	Compliance with Law .....	28
7.5	Payment of Taxes .....	28
7.6	Insurance .....	28
7.7	Performance of Obligations .....	28
7.8	ERISA .....	28
7.9	Use of Proceeds.....	29
7.10	Audits/Inspections.....	29
7.11	Indebtedness to Capitalization.....	29
SECTION 8. NEGATIVE COVENANTS .....		29
8.1	Nature of Business .....	29
8.2	Consolidation and Merger .....	29
8.3	Sale or Lease of Assets.....	30
8.4	Transactions with Affiliates .....	30
8.5	Fiscal Year .....	30
8.6	Liens .....	30
8.7	Sanctions.....	31
8.8	Anti-Corruption Laws.....	31
SECTION 9. EVENTS OF DEFAULT .....		32
9.1	Events of Default.....	32
9.2	Acceleration; Remedies .....	33
9.3	Allocation of Payments after Event of Default.....	34
SECTION 10. [RESERVED] .....		35
SECTION 11. MISCELLANEOUS .....		35
11.1	Notices and other Communications; Facsimile Copies .....	35
11.2	Right of Set-Off.....	36
11.3	Benefit of Agreement .....	36
11.4	No Waiver; Remedies Cumulative .....	37
11.5	Payment of Expenses, etc .....	37
11.6	Amendments, Waivers and Consents.....	38
11.7	Counterparts; Telecopy.....	38
11.8	Headings .....	38
11.9	[Reserved].....	38

<b>11.10</b>	<b>Survival of Indemnification and Representations and Warranties</b>	38
<b>11.11</b>	<b>Governing Law; Jurisdiction</b>	38
<b>11.12</b>	<b>Waiver of Jury Trial; Waiver of Consequential Damages</b>	39
<b>11.13</b>	<b>Time</b>	39
<b>11.14</b>	<b>Severability</b>	39
<b>11.15</b>	<b>Entirety</b>	39
<b>11.16</b>	<b>Confidentiality</b>	39
<b>11.17</b>	<b>Binding Effect</b>	40
<b>11.18</b>	<b>USA Patriot Act Notice</b>	40
<b>11.19</b>	<b>No Fiduciary Responsibility</b>	41



## SCHEDULES

Schedule 3.5	Place and Manner of Payments
Schedule 11.1	Notices

## EXHIBITS

Exhibit 2.4	Form of Notice of Borrowing of Revolving Loans
Exhibit 2.6	Form of Notice of Continuation/Conversion
Exhibit 2.9	Form of Note
Exhibit 7.1(c)	Form of Compliance Certificate

## **CREDIT AGREEMENT**

**THIS AMENDED AND RESTATED CREDIT AGREEMENT** (this “Credit Agreement”), dated as of November 18, 2015, is entered into between **GULF POWER COMPANY**, a Florida corporation (the “Borrower”), and **JPMORGAN CHASE BANK, N.A.** (the “Lender”).

### **RECITALS**

**WHEREAS**, the Borrower and the Lender have entered into that certain Credit Agreement dated as of July 26, 2011 (as amended or modified from time to time prior to the date hereof, the “Existing Credit Agreement”); and

**WHEREAS**, the parties hereto wish to amend and restate the Existing Credit Agreement to make certain amendments and modifications as more fully set forth herein;

**NOW, THEREFORE, IN CONSIDERATION** of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Existing Credit Agreement is amended and restated in its entirety to read as follows:

### **SECTION 1.**

#### **DEFINITIONS AND ACCOUNTING TERMS**

##### **1.1 Definitions.**

As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number the plural and in the plural the singular:

“Adjusted Base Rate” means the Base Rate plus the Applicable Percentage for Base Rate Loans.

“Adjusted Eurodollar Rate” means the Eurodollar Rate plus the Applicable Percentage for Eurodollar Loans.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a corporation if such Person possesses, directly or indirectly, the power (i) to vote 20% or more of the securities having ordinary voting power for the election of directors of such corporation or (ii) to direct or cause direction of the management and policies of such corporation, whether through the ownership of voting securities, by contract or otherwise.

“Applicable Percentage” means, at any time, and with respect to all Eurodollar Loans, Base Rate Loans and Unused Fees, the applicable percentage corresponding to the Senior Debt Rating in effect from time to time as described below:

Senior Debt Rating	Applicable Percentage for Eurodollar Loans	Applicable Percentage for Base Rate Loans	Applicable Percentage for Unused Fees
I.    ≥ A+ from S&P ≥A1 from Moody's ≥A+ from Fitch	0.875%	0.000%	0.075%
II.    ≥ A but < A+ from S&P ≥A2 but < A1 from Moody's ≥A but < A+ from Fitch	1.000%	0.000%	0.100%
III.   ≥ A- but < A from S&P ≥A3 but < A2 from Moody's ≥A- but < A from Fitch	1.125%	0.125%	0.125%
IV.    ≥ BBB+ but < A- from S&P ≥Baa1 but < A3 from Moody's ≥BBB+ but < A- from Fitch	1.250%	0.250%	0.175%
V.    ≥ BBB but < BBB+ from S&P ≥Baa2 but < Baa1 from Moody's ≥BBB but < BBB+ from Fitch	1.500%	0.500%	0.225%
VI.    ≤ BBB- from S&P ≤ Baa3 from Moody's ≤ BBB- from Fitch or unrated by any two of S&P, Moody's or Fitch	1.750%	0.750%	0.275%

Notwithstanding the above, if at any time there is a split in Senior Debt Ratings among S&P, Moody's and Fitch and (a) two Senior Debt Ratings are equal and higher than the third Senior Debt Rating, the higher Senior Debt Ratings will apply, (b) two Senior Debt Ratings are equal and lower than the third Senior Debt Rating, the lower Senior Debt Ratings will apply or (c) no Senior Debt Ratings are equal, the intermediate Senior Debt Rating will apply. In the event that the Borrower shall maintain Senior Debt Ratings from only two of S&P, Moody's or Fitch and there is a split in such Senior Debt Ratings, (i) in the event of a single level split, the higher Senior Debt Rating (i.e. the lower pricing) will apply and (ii) in the event of a multiple level split, one level below the higher Senior Debt Rating will apply.

The Applicable Percentages for Eurodollar Loans, Base Rate Loans and Unused Fees shall be determined and adjusted on the date (each a “Calculation Date”) on which there is any change in the Senior Debt Rating of the Borrower. Each Applicable Percentage shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Applicable Percentage shall be applicable to all existing Revolving Loans as well as any new Revolving Loans made. The Borrower shall notify the Lender in writing immediately upon any change in its Senior Debt Rating.

“Bankruptcy Code” means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

“Base Rate” means, for any day, a simple rate per annum equal to the greatest of (a) the Prime Rate for such day, (b) the sum of 1/2% plus the Federal Funds Rate for such day and (c) the one month Eurodollar Rate plus 1.0%; and if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Credit Agreement.

“Base Rate Loan” means a Revolving Loan which bears interest based on the Adjusted Base Rate.

“Borrower” means Gulf Power Company, a Florida corporation, or such other Person as may become the Borrower pursuant to Section 8.2(b)(ii), and its successors.

“Borrower Obligations” means, without duplication, all of the obligations of the Borrower to the Lender, whenever arising, under this Credit Agreement, the Note or any of the other Credit Documents.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which the Lender specifically or banking institutions generally are authorized or required by law or other governmental action to close in Atlanta, Georgia or New York, New York; provided that in the case of Eurodollar Loans, such day is also a day on which dealings between banks are carried on in Dollar deposits in the London interbank market.

“Calculation Date” has the meaning set forth in the definition of Applicable Percentage.

“Capitalization” means, with respect to the Borrower and its consolidated Subsidiaries (determined on a consolidated basis), without duplication, the sum of (a) the aggregate of (i) the capital stock (but excluding treasury stock and capital stock subscribed and unissued), other equity accounts (including retained earnings and paid-in capital, but excluding accumulated other comprehensive income and loss) of the Borrower and its Subsidiaries as the same appears on its balance sheet prepared in accordance with GAAP as of the date of determination and (ii) the principal amount of Hybrid Securities (other than Hybrid Securities that are Indebtedness) and (b) the amount of all Indebtedness of the Borrower and its Subsidiaries as of the same date.

“Change of Control” means the failure of The Southern Company, a Delaware corporation, to own more than 51% of the outstanding shares of the capital stock of the Borrower entitled to vote generally for the election of directors of the Borrower.

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.



“Credit Documents” means this Credit Agreement, the Note and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto.

“Debt Rating” means any credit rating of the Borrower by S&P, Moody’s or Fitch.

“Debtor Relief Laws” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event, act or condition which, with notice or lapse of time, or both, would constitute an Event of Default.

“Default Rate” means an interest rate equal to the interest rate (including the Applicable Percentage, if any) otherwise applicable to such Borrower Obligations plus 2% per annum.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Dollars” and “\$” means dollars in lawful currency of the United States of America.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which the Borrower or any ERISA Affiliate was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or the Borrower or any ERISA Affiliate incurred a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or receipt by the Borrower or any ERISA Affiliate of notice from the Multiemployer Plan that the Multiemployer Plan is in critical or endangered status, in reorganization or insolvent; (d) the filing by the Borrower or any ERISA Affiliate of a notice of intent to terminate a Pension Plan under a distress termination under Section 4041 of ERISA, (e) receipt by Borrower or any ERISA Affiliate of notice from the PBGC of the institution by the PBGC of proceedings to terminate a Pension Plan; (f) receipt by the Borrower or any ERISA Affiliate of notice from the PBGC of the appointment of a trustee to administer a Pension Plan; (g) the determination by an actuary for the Pension Plan that the Pension Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA and claims for benefit and funding obligations in the ordinary course, upon the Borrower or any ERISA Affiliate.

“Eurodollar Loan” means a Revolving Loan bearing interest based on the Adjusted Eurodollar Rate.

“Eurodollar Base Rate” means:

(a) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Lender, as published by Bloomberg (or such other commercially available source providing such quotations as may be designated by the Lender from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at approximately 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits with a term of one month commencing that day;

provided that (i) to the extent a comparable or successor rate is approved by the Lender in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Lender, such approved rate shall be applied as otherwise reasonably determined by the Lender and (ii) if the Eurodollar Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Credit Agreement.

“Eurodollar Rate” means (a) for any Interest Period with respect to any Eurodollar Loan, a rate per annum determined by the Lender to be equal to the quotient obtained by dividing (i) the Eurodollar Base Rate for such Eurodollar Loan for such Interest Period by (ii) one minus the Eurodollar Reserve Percentage for such Eurodollar Loan for such Interest Period and (b) for any day with respect to any Base Rate Loan the interest rate on which is determined by reference to the Eurodollar Rate, a rate per annum determined by the Lender to be equal to the quotient obtained by dividing (i) the Eurodollar Base Rate for such Base Rate Loan for such day by (ii) one minus the Eurodollar Reserve Percentage for such Base Rate Loan for such day.

“Eurodollar Reserve Percentage” means for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D, as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to “Eurocurrency liabilities” as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of Eurodollar Loans is determined), whether or not the Lender has any Eurodollar liabilities subject to such reserve requirement at that time. Eurodollar Loans shall be deemed to constitute Eurodollar liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to time to the Lender. The Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

“Event of Default” has the meaning specified in Section 9.1.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Credit Agreement (or any amended or successor version that is substantively comparable and not

materially more onerous to comply with), and any regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements implementing the foregoing.

“Federal Funds Rate” means for any day the rate per annum (rounded upward to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Lender on such day on such transactions as determined by the Lender.

“Fitch” means Fitch Ratings, Inc., or any successor or assignee of the business of such company in the business of rating securities.

“FPSC” means the Florida Public Service Commission.

“GAAP” means generally accepted accounting principles in the United States applied on a consistent basis and subject to Section 1.3.

“Governmental Authority” means any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranty Obligations” means, in respect of any Person, any legally enforceable obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of another Person.

“Hybrid Securities” means (a) any Trust Preferred Obligations and any Junior Subordinated Deferred Interest Debt Obligations and (b) any other securities of the Borrower (other than capital stock of the Borrower) that are afforded equity treatment by any rating agency at the time of issuance of such securities.

“Indebtedness” means, as to any Person, without duplication: (i) all obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments, including, without limitation, the obligations of such Person under the SCFC Notes; (ii) all obligations of such Person for the deferred purchase price of property or services (except trade accounts payable arising in the ordinary course of business); (iii) all capital lease obligations of such Person; (iv) all Indebtedness of others secured by a Lien on any properties, assets or revenues of such Person (other than stock, partnership interests or other equity interests of such Person in entities other than the Borrower or any of its Subsidiaries) to the extent of the lesser of the value of the property subject to such Lien or the amount of such Indebtedness; (v) all Guaranty Obligations; and (vi) all non-contingent obligations of such Person under any letters of credit or bankers’ acceptances. It is understood and agreed for purposes of calculations under Section 7.11 of this Credit Agreement that Indebtedness (including Guaranty Obligations) shall not include any Indebtedness with respect to Hybrid Securities, as long as (A) the maturity date of such Hybrid Securities is subsequent to the Maturity Date, and (B) such Hybrid Securities are

fully subordinated in right of payment to the Borrower Obligations; provided that the aggregate amount of Hybrid Securities excluded for purposes of calculation of Section 7.11 at any date shall not exceed 15% of Capitalization; provided further, that the amount of any mandatory principal amortization or defeasance of Hybrid Securities prior to the Maturity Date and any Hybrid Securities with a maturity date prior to the Maturity Date shall, in each case, be included in this definition of Indebtedness.

“Interest Payment Date” means (a) as to Base Rate Loans, the last day of each fiscal quarter of the Borrower and the Maturity Date and (b) as to Eurodollar Loans, the last day of each applicable Interest Period and the Maturity Date. In addition, where the applicable Interest Period for a Eurodollar Loan is greater than three months, then an Interest Payment Date shall also occur on the last day of each three-month period during such Interest Period. If an Interest Payment Date falls on a date which is not a Business Day, such Interest Payment Date shall be deemed to be the next succeeding Business Day, except that in the case of Eurodollar Loans where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day.

“Interest Period” means, as to Eurodollar Loans, a period of one, two, three or six months’ duration or such other periods as agreed to by the Lender, as the Borrower may elect and as may be available, commencing, in each case, on the date of the borrowing (including continuations and conversions of Eurodollar Loans); provided, however, (i) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (ii) no Interest Period shall extend beyond the Maturity Date and (iii) with respect to Eurodollar Loans, where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month.

“Junior Subordinated Deferred Interest Debt Obligations” means subordinated deferrable interest debt obligations of the Borrower or one of its Subsidiaries.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction or other similar recording or notice statute, and any lease in the nature thereof).

“Material Adverse Effect” means a material adverse effect on (a) the operations, assets, financial condition or business of the Borrower, (b) the ability of the Borrower to perform its obligations under this Credit Agreement and the other Credit Documents or (c) the validity or enforceability of this Credit Agreement, any of the other Credit Documents, or the rights and



remedies of the Lender hereunder or thereunder; provided, that neither a downgrade in any Debt Rating nor the inability of the Borrower to place commercial paper or variable rate tax exempt pollution control bonds shall, in and of itself, constitute a Material Adverse Effect.

“Maturity Date” means November 19, 2018, as such date may be extended pursuant to Section 2.3; provided that if the Maturity Date as determined hereunder falls on a day that is not a Business Day, such Maturity Date shall be deemed to fall on the next preceding Business Day.

“Moody’s” means Moody’s Investors Service, Inc., or any successor or assignee of the business of such company in the business of rating securities.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or has any continuing liability.

“Net Tangible Assets” means, as of any date, the total assets shown on the balance sheet of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP less (a) all current liabilities and minority interests and (b) goodwill and other identifiable intangibles.

“Note” means the promissory note of the Borrower in favor of the Lender evidencing the Revolving Loans and substantially in the form of Exhibit 2.9, as such promissory note may be amended, modified, supplemented or replaced from time to time.

“Notice of Borrowing of Revolving Loans” means a request by the Borrower for a Revolving Loan (or any continuation or conversion thereof) in the form of Exhibit 2.4.

“Notice of Continuation/Conversion” means a request by the Borrower for the continuation or conversion of a Revolving Loan in the form of Exhibit 2.6.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off Balance Sheet Indebtedness” means any obligation of a Person that would be considered indebtedness for tax purposes but is not set forth on the balance sheet of such Person, including, but not limited to, (a) any synthetic lease, tax retention operating lease, off balance sheet loan or similar off-balance sheet financing product of such Person, (b) the aggregate amount of uncollected accounts receivables of such Person subject at such time to a sale of receivables (or similar transaction) and (c) obligations of any partnership or joint venture that is recourse to such Person.

“Other Taxes” has the meaning set forth in Section 4.4(b).

“Participation Purchaser” shall have the meaning assigned to such term in Section 11.3(d).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, and 436 of the Code and Sections 302 and 303 of ERISA.

“Pension Plan” means any “employee pension benefit plan”, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is maintained, contributed to or required to be contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Person” means any individual, partnership (general or limited), limited liability company, joint venture, firm, corporation, association, trust or other enterprise (whether or not incorporated), or any government or political subdivision or any agency, department or instrumentality thereof.

“Prime Rate” means the per annum rate of interest established from time to time by the Lender at its principal office as its “prime rate.” Such rate is a rate set by the Lender based upon various factors including the Lender’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in the interest rate resulting from a change in the Prime Rate shall become effective as of the opening of business on the day on which such change in the Prime Rate is announced by the Lender.

“Regulation D, U or X” means Regulation D, U or X, respectively, of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Reportable Event” means a “reportable event” as defined in Section 4043(c) of ERISA with respect to which the notice requirements to the PBGC have not been waived.

“Responsible Officer” means, as to the Borrower, any of the Chief Executive Officer, Chief Financial Officer, Treasurer, Comptroller, Secretary, Assistant Treasurer or Assistant Secretary of the Borrower.

“Revolving Loan Commitment” means THIRTY MILLION and NO/100 DOLLARS (\$30,000,000) as such amount may be otherwise reduced in accordance with Section 2.8.

“Revolving Loans” means the revolving loans made by the Lender to the Borrower pursuant to Section 2.1(a).

“Sanction(s)” means any economic or financial sanction administered or enforced by the United States Government, including, without limitation, OFAC, the United Nations Security Council and the European Union or Her Majesty’s Treasury (“HMT”).

“S&P” means Standard & Poor’s Financial Services LLC, a division of McGraw-Hill Financial and any successor thereto.

“SCFC” means Southern Company Funding Corporation, a Delaware corporation, an Affiliate of the Borrower and a wholly-owned Subsidiary of The Southern Company, a Delaware corporation.

“SCFC Notes” means one or more intercompany notes issued by the Borrower to SCFC in support of commercial paper issued by SCFC on behalf of the Borrower pursuant to that certain Financial Services Agreement, dated as of March 15, 2001, between the Borrower and SCFC.

“Senior Debt Rating” means the long-term senior unsecured, non-credit enhanced debt rating of the Borrower by each of S&P, Moody’s or Fitch.

“Significant Subsidiary” means a Subsidiary of the Borrower which represents more than 15% of the Borrower’s assets on a consolidated basis.

“Subsidiary” means, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries has more than 50% equity interest at any time.

“Taxes” has the meaning set forth in Section 4.4(a).

“Trust Preferred Obligations” means the subordinated, deferrable interest debt securities of the Borrower, and, without duplication, any related securities issued by a trust or other special purpose entity in connection therewith.

“Unused Fees” has the meaning set forth in Section 3.4(a).

“Unused Revolving Loan Commitment” means, for any period from the Closing Date to the Maturity Date, the amount by which (a) the average Revolving Loan Commitment for such period exceeds (b) the daily average sum for such period of the aggregate principal amount of all Revolving Loans outstanding.

## **1.2 Computation of Time Periods and Other Definitional Provisions.**

With reference to this Credit Agreement and each other Credit Document, unless otherwise specified herein or in such other Credit Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Credit Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Credit Document, shall be construed to refer to such Credit Document in its entirety and not

to any particular provision thereof, (iv) all references in a Credit Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, Recitals of and Exhibits and Schedules to, the Credit Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all assets and properties, tangible and intangible, real and personal, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Credit Documents are included for convenience of reference only and shall not affect the interpretation of this Credit Agreement or any other Credit Document.

### **1.3 Accounting Terms.**

Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lender hereunder shall be prepared, in accordance with GAAP applied on a consistent basis. All calculations made for the purposes of determining compliance with this Credit Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial statements delivered pursuant to Section 7.1 (or, prior to the delivery of the first financial statements pursuant to Section 7.1, consistent with the financial statements described in Section 5.1(e)); provided, however, (a) if (i) the Borrower shall object to determining such compliance on such basis at the time of delivery of such financial statements due to any change in GAAP or the rules promulgated with respect thereto or (ii) the Lender shall so object in writing within 30 days after delivery of such financial statements, then such calculations shall be made on a basis consistent with the most recent financial statements delivered by the Borrower to the Lender as to which no such objection shall have been made and (b) it is agreed that for purposes of calculations under Section 7.11 of this Credit Agreement, capital lease obligations shall be calculated in accordance with GAAP as of the Closing Date unless otherwise agreed by the Borrower and the Lender.

### **1.4 [Reserved].**

### **1.5 Rounding Rates.**

Any financial ratios required to be maintained by the Borrower pursuant to this Credit Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number). The Lender does not warrant, nor accept responsibility, nor shall the Lender have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Base Rate” or with respect to any comparable or successor rate thereto (except such as shall result from the gross negligence or willful misconduct of the Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction).

## **SECTION 2.**

### **LOANS**

#### **2.1 Revolving Loan Commitment.**

Subject to the terms and conditions set forth herein, the Lender agrees to make revolving loans to the Borrower, in Dollars, at any time and from time to time, during the period from the Closing Date to the Maturity Date (each a “Revolving Loan” and collectively the “Revolving Loans”); provided, however, that the sum of the aggregate amount of Revolving Loans outstanding shall not exceed the Revolving Loan Commitment. Subject to the terms of this Credit Agreement, the Borrower may borrow, repay and reborrow the amount of the Revolving Loan Commitment.

#### **2.2 [Reserved].**

#### **2.3 Extension of Maturity Date..**

Not more than 75 days and not less than 20 days prior to the first anniversary of the Closing Date, the Borrower may request in writing that the Lender extend the then current Maturity Date for an additional one year. The Lender shall provide the Borrower, not more than 15 days subsequent to any such request by the Borrower, with written notice regarding whether it agrees to extend the then current Maturity Date. The decision by the Lender shall be in its sole discretion and failure by the Lender to give timely written notice hereunder shall be deemed a decision by the Lender not to extend the Maturity Date. If the Lender timely agrees in writing to extend the Maturity Date, then the Maturity Date shall be extended for an additional one year pursuant to a duly executed written amendment to this Credit Agreement. If the Lender fails to extend the Maturity Date, then the Borrower shall pay in full all outstanding Revolving Loans, together with accrued and unpaid interest thereon and all sums with respect thereto on the then current Maturity Date; it being understood that on and after the Maturity Date, the Borrower may no longer request, and the Lender is no longer obligated to make, new Revolving Loans under this Credit Agreement.

#### **2.4 Method of Borrowing for Revolving Loans.**

In the case of Revolving Loans, by no later than 2:00 p.m. (a) on the date of the requested borrowing of Revolving Loans that will be Base Rate Loans or (b) three Business Days prior to the date of the requested borrowing of Revolving Loans that will be Eurodollar Loans, the Borrower shall submit a written Notice of Borrowing of Revolving Loans in the form of Exhibit 2.4 completed and signed by a Responsible Officer of the Borrower to the Lender setting forth (i) the amount requested, (ii) whether such Revolving Loans shall accrue interest at the Adjusted Base Rate or the Adjusted Eurodollar Rate, (iii) with respect to Revolving Loans that will be Eurodollar Loans, the Interest Period applicable thereto and (iv) certification that the Borrower has complied in all respects with Section 5.2.

#### **2.5 Funding of Revolving Loans.**

Upon receipt of a Notice of Borrowing of Revolving Loans, the Lender shall make the amount of the requested Revolving Loans available to the Borrower by 4:00 p.m. (in the case of any Notice of Borrowing of Revolving Loans delivered after 12:00 noon but prior to 2:00 p.m.) on the date specified in the Notice of Borrowing of Revolving Loans by deposit in Dollars of immediately available funds to the account of the Borrower that is designated on the Notice of Borrowing of Revolving Loans; provided, that, for any Notice of Borrowing of Revolving Loans submitted by the Borrower no later than 12:00



noon, the Lender shall make the requested Revolving Loans available to the Borrower by 2:00 p.m. on the date specified in the Notice of Borrowing of Revolving Loans.

## **2.6 Continuations and Conversions.**

The Borrower shall have the option, on any Business Day, to continue existing Eurodollar Loans for a subsequent Interest Period, to convert Base Rate Loans into Eurodollar Loans or to convert Eurodollar Loans in Dollars into Base Rate Loans; provided, however, that (a) each such continuation or conversion must be requested by the Borrower pursuant to a written Notice of Continuation/Conversion, in the form of Exhibit 2.6, in compliance with the terms set forth below, (b) except as provided in Section 4.1, Eurodollar Loans may only be continued or converted into Base Rate Loans on the last day of the Interest Period applicable hereto, (c) Eurodollar Loans may not be continued nor may Base Rate Loans be converted into Eurodollar Loans during the existence and continuation of a Default or Event of Default and (d) any request to extend a Eurodollar Loan that fails to comply with the terms hereof or any failure to request an extension of a Eurodollar Loan at the end of an Interest Period shall constitute a conversion in each case, to a Base Rate Loan on the last day of the applicable Interest Period. Each continuation or conversion must be requested by the Borrower no later than 12:00 p.m. (noon) (i) on the date for a requested conversion of a Eurodollar Loan to a Base Rate Loan or (ii) three Business Days prior to the date for a requested continuation of a Eurodollar Loan or conversion of a Base Rate Loan to a Eurodollar Loan, in each case pursuant to a written Notice of Continuation/Conversion submitted to the Lender which shall set forth (A) whether the Borrower wishes to continue or convert such Revolving Loans and (B) if the request is to continue a Eurodollar Loan or convert a Base Rate Loan to a Eurodollar Loan, the Interest Period applicable thereto.

## **2.7 Minimum Amounts.**

Each request for a Revolving Loan or a conversion or continuation hereunder shall be subject to the following requirements: (a) each Eurodollar Loan shall be in a minimum of \$5,000,000, (b) each Base Rate Loan shall be in a minimum amount of the lesser of \$5,000,000 or the remaining amount available to be borrowed and (c) no more than ten Eurodollar Loans shall be outstanding hereunder at any one time. For the purposes of this Section 2.7, all Eurodollar Loans with the same Interest Periods shall be considered as one Eurodollar Loan, but Eurodollar Loans with different Interest Periods, even if they begin on the same date, shall be considered separate Eurodollar Loans. Any Revolving Loan requested shall be in an integral multiple of \$1,000,000 unless the request is for all of the remaining amount of the Revolving Loan Commitment available to be borrowed.

## **2.8 Reductions of Revolving Loan Commitment.**

Upon at least two Business Days' prior written notice to the Lender, the Borrower shall have the right to permanently terminate or reduce the aggregate unused amount of the Revolving Loan Commitment, at any time or from time to time; provided that (a) each partial reduction shall be in an aggregate amount at least equal to \$5,000,000 and in integral multiples of \$1,000,000 above such amount, and (b) no reduction shall be made which would reduce the Revolving Loan Commitment to an amount less than the then outstanding Revolving Loans. Any reduction in (or termination of) the Revolving Loan Commitment shall be permanent and may not be reinstated.

## **2.9 Evidence of Obligations.**

(a) Lender Records. The date, amount, type, interest rate and duration of Interest Period (if applicable) of each Revolving Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books;

provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing hereunder or under the Note in respect of the Revolving Loans to be evidenced by the Note, and each such recordation or endorsement shall be conclusive and binding absent manifest error.

(b) Note. The Revolving Loans made by the Lender shall be evidenced by a promissory note of the Borrower payable to the Lender in substantially the form of Exhibit 2.9 (the "Note") and shall be delivered by the Borrower in accordance with Section 5.1(a).

### **SECTION 3.**

#### **PAYMENTS**

##### **3.1 Interest.**

(a) Interest Rate.

(i) All Revolving Loans that are Base Rate Loans shall accrue interest at the Adjusted Base Rate.

(ii) All Eurodollar Loans shall accrue interest at the Adjusted Eurodollar Rate applicable to such Eurodollar Loan.

(b) Default Rate of Interest. Upon the occurrence, and during the continuance, of an Event of Default, the principal of and, to the extent permitted by law, interest on the Revolving Loans and any other amounts owing hereunder or under the other Credit Documents shall bear interest, payable on demand, at the Default Rate.

(c) Interest Payments. Interest on Revolving Loans shall be due and payable in arrears on each Interest Payment Date.

##### **3.2 Prepayments.**

(a) Voluntary Prepayments. The Borrower shall have the right to prepay Revolving Loans in whole or in part from time to time without premium or penalty; provided, however, that (i) Eurodollar Loans may only be prepaid on three Business Days' prior written notice to the Lender and any prepayment of Eurodollar Loans will be subject to Section 4.3; and (ii) each such partial prepayment of Revolving Loans shall be in the minimum principal amount of \$1,000,000. Amounts prepaid hereunder shall be applied as the Borrower may elect; provided that if the Borrower fails to specify the application of a voluntary prepayment then such prepayment shall be applied first to Revolving Loans that are Base Rate Loans, and second to Eurodollar Loans in direct order of Interest Period maturities.

(b) Mandatory Prepayments.

(i) If at any time the aggregate amount of Revolving Loans outstanding exceeds the Revolving Loan Commitment, the Borrower shall immediately make a principal payment to the Lender in the manner and in an amount such that the sum of the aggregate amount of Revolving Loans outstanding is less than or equal to the Revolving Loan Commitment.

(ii) Any prepayments made under this Section 3.2(b) shall be subject to Section 4.3 and shall be applied first to Revolving Loans that are Base Rate Loans, and second to Eurodollar Loans in direct order of Interest Period maturities.

### **3.3 Payment in Full at Maturity.**

Subject to the terms of Section 2.3, on the Maturity Date, the entire outstanding principal amount owing under the Credit Documents, together with accrued but unpaid interest and all other sums owing under the Credit Documents, shall be due and payable in full, unless accelerated sooner pursuant to Section 9.2.

### **3.4 Fees.**

#### **(a) Unused Fees.**

(i) In consideration of the Revolving Loan Commitment being made available by the Lender hereunder, the Borrower agrees to pay to the Lender a per annum fee equal to the Applicable Percentage for Unused Fees multiplied by the Unused Revolving Loan Commitment (the “Unused Fees”).

(ii) The accrued Unused Fees shall be due and payable in arrears fifteen days after the end of each fiscal quarter of the Borrower for the immediately preceding fiscal quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date, as well as on the Maturity Date.

(b) Upfront Fee. The Borrower shall pay to the Lender, on the Closing Date, a fee equal to 0.15% multiplied by the Revolving Loan Commitment.

### **3.5 Place and Manner of Payments.**

All payments of principal, interest, fees, expenses and other amounts to be made by the Borrower under this Credit Agreement shall be made unconditionally and without deduction for any counterclaim, defense, recoupment or setoff. All such payments shall be received not later than 2:00 p.m. on the date when due in Dollars and in immediately available funds by the Lender as set forth on Schedule 3.5 (which Schedule may be amended by the Lender at any time by delivering written notice of such amendment to the Borrower). The Borrower shall, at the time it makes any payment under this Credit Agreement, specify to the Lender the Revolving Loans, fees or other amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that it fails to specify, or if such application would be inconsistent with the terms hereof, the Lender shall apply such payment in such manner as it reasonably determines in its sole discretion). Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (subject to accrual of interest and fees for the period of such extension), except that, in the case of Eurodollar Loans (or interest payable with respect thereto), if the extension would cause the payment to be made in the next following calendar month, then such payment shall instead be made on the next preceding Business Day.

### **3.6 [Reserved].**

### **3.7 Computations of Interest and Fees.**

(a) Except for Base Rate Loans bearing interest based on the Prime Rate, on which interest shall be computed on the basis of a 365 or 366 day year, as the case may be, all

computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days.

(b) It is the intent of the Lender and the Borrower to conform to and contract in strict compliance with applicable usury Law from time to time in effect. All agreements between the Lender and the Borrower are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, or received under this Credit Agreement, under the Note or otherwise, exceed the maximum nonusurious amount permissible under applicable Law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such documents shall be automatically reduced to the maximum nonusurious amount permitted under applicable Law, without the necessity of execution of any amendment or new document. If the Lender shall ever receive anything of value which is characterized as interest on the Revolving Loans under applicable Law and which would, apart from this provision, be in excess of the maximum lawful amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Revolving Loans and not to the payment of interest, or refunded to the Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Revolving Loans. The right to demand payment of the Revolving Loans or any other indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and the Lender does not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lender with respect to the Revolving Loans shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Revolving Loans so that the amount of interest on account of such indebtedness does not exceed the maximum nonusurious amount permitted by applicable Law.

## **SECTION 4.**

### **ADDITIONAL PROVISIONS REGARDING LOANS**

#### **4.1 Eurodollar Loans.**

(a) Unavailability. In the event that the Lender shall have determined in good faith (i) that Dollar deposits in the principal amounts requested with respect to a Eurodollar Loan are not generally available in the London interbank Eurodollar market or (ii) that reasonable means do not exist for ascertaining the Eurodollar Rate or the Lender shall have determined that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to the Lender of funding such Eurodollar Loan, the Lender shall, as soon as practicable thereafter, give written notice of such determination to the Borrower. In the event of any such determination under clauses (i) or (ii) above, until the Lender shall have advised the Borrower that the circumstances giving rise to such notice no longer exist, (A) any request by the Borrower for Eurodollar Loans shall be deemed to be a request for Base Rate Loans and (B) any request by the Borrower for conversion into or continuation of Eurodollar Loans shall be deemed to be a request for conversion into or continuation of Base Rate Loans.

(b) Change in Legality.

Notwithstanding any other provision herein, if any (i) adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted, implemented or issued) shall make it unlawful for the Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrower, the Lender may, until such time as the circumstances giving rise to such unlawfulness no longer exists:

(A) declare that Eurodollar Loans, and conversions to or continuations of Eurodollar Loans, will not thereafter be made by the Lender hereunder, whereupon any request by the Borrower for, or for conversion into or continuation of, Eurodollar Loans shall be deemed a request for, or for conversion into or continuation of, Base Rate Loans, unless such declaration shall be subsequently withdrawn; and

(B) require that all outstanding Eurodollar Loans made by it be converted to Base Rate Loans in which event all such Eurodollar Loans shall be automatically converted to Base Rate Loans.

In the event the Lender shall exercise its rights under clause (A) or (B) above, all payments and prepayments of principal which would otherwise have been applied to repay the Eurodollar Loans that would have been made by the Lender or the converted Eurodollar Loans of the Lender shall instead be applied to repay the Base Rate Loans made by the Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(c) Increased Costs. If at any time the Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to the making, the commitment to make or the maintaining of any Eurodollar Loan because of (i) any adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority including, without limitation, the imposition, modification or deemed applicability of any reserves, deposits or similar requirements (such as, for example, but not limited to, a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the Adjusted Eurodollar Rate) (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted or issued), then the Borrower shall pay to the Lender within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, such additional amounts (in the form of an increased rate



of, or a different method of calculating, interest or otherwise as the Lender may determine in its sole discretion) as may be required to compensate the Lender for such increased costs or reductions in amounts receivable hereunder.

Each determination and calculation made by the Lender under this Section 4.1 shall, absent manifest error, be binding and conclusive on the parties hereto.

#### **4.2 Capital Adequacy.**

If, after the date hereof, the Lender has determined that the adoption or effectiveness of any applicable Law, rule or regulation regarding capital adequacy or liquidity, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Lender's (or parent corporation's) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which the Lender, or its parent corporation, could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration the Lender's (or parent corporation's) policies with respect to capital adequacy and liquidity)(provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted, implemented or issued), then the Borrower shall pay to the Lender within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, such additional amount or amounts as will compensate the Lender for such reduction. Each determination by the Lender of amounts owing under this Section 4.2 shall, absent manifest error, be conclusive and binding on the parties hereto.

#### **4.3 Compensation.**

The Borrower shall compensate the Lender, within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, for all reasonable losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by the Lender to fund its Eurodollar Loans) which the Lender may sustain:

- (a) if for any reason (other than a default by the Lender) a borrowing, continuation or conversion of Eurodollar Loans does not occur on a date specified therefor in a Notice of Borrowing of Revolving Loans or Notice of Continuation/Conversion, as the case may be;
- (b) if any prepayment, repayment, continuation or conversion of any Eurodollar Loan occurs on a date which is not the last day of an Interest Period applicable thereto, including, without limitation, in connection with any demand, acceleration, mandatory prepayment or otherwise (including any demand under this Section 4); or
- (c) if the Borrower fails to repay its Eurodollar Loans when required by the terms of this Credit Agreement.

Calculation of all amounts payable to the Lender under this Section 4.3 shall be made as though the Lender has actually funded its relevant Eurodollar Loan through the purchase of a Eurodollar deposit bearing interest at the Adjusted Eurodollar Rate in an amount equal to the amount of that Revolving Loan, having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of the Lender to a domestic office of the Lender in the United States of America; provided, however, that the Lender may fund each of its Eurodollar Loans in any manner it sees fit and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section 4.3. Each determination and calculation hereunder shall be in good faith and shall be conclusive absent manifest error.

#### **4.4    Taxes.**

(a)    Tax Liabilities Imposed on the Lender. (i) Any and all payments by the Borrower hereunder or under any of the Credit Documents shall be made, in accordance with the terms hereof and thereof, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (A) taxes measured by net income and franchise taxes imposed on the Lender by the jurisdiction under the laws of which the Lender is organized or transacting business or any political subdivision thereof and (B) any U.S. federal withholding taxes imposed under FATCA (all such non-excluded taxes, being hereinafter referred to as “Taxes”). If any applicable Laws (as determined in the good faith discretion of the Lender or Borrower, as applicable) require the deduction or withholding of any tax from any such payment hereunder, then the Lender or Borrower shall be entitled to make such deduction or withholding. If the Borrower shall be required by applicable Law to deduct any taxes from or in respect of any sum payable hereunder to the Lender, (A) to the extent that the withholding or deduction is made on account of Taxes, the sum payable by the Borrower shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 4.4) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (B) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b)    Other Taxes. In addition, the Borrower agrees to pay, upon written notice from the Lender and prior to the date when penalties attach thereto, all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any state or political subdivision thereof or any applicable foreign jurisdiction that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Credit Agreement (collectively, the “Other Taxes”).

(c)    Refunds. If the Lender shall become aware that it is entitled to claim a refund (or a refund in the form of a credit) (each, a “Refund”) from a Governmental Authority (as a result of any error in the amount of Taxes or Other Taxes paid to such Governmental Authority or otherwise) of Taxes or Other Taxes which the Borrower has paid, or with respect to which the Borrower has paid additional amounts, pursuant to this Section 4.4, it shall promptly notify the Borrower in writing of the availability of such Refund and shall, within 30 days after receipt of written notice by the Borrower make a claim to such Governmental Authority for such Refund at the Borrower’s expense if, in the judgment of the Lender, the making of such claim will not be otherwise disadvantageous to it; provided that nothing in this subsection (c) shall be construed to require the Lender to institute any administrative proceeding (other than the filing of a claim for any such Refund) or judicial proceeding to obtain such Refund.

If the Lender receives a Refund from a Governmental Authority (as a result of any error in the amount of Taxes or Other Taxes paid to such Governmental Authority or otherwise) of any Taxes or Other Taxes which have been paid by the Borrower, or with respect to which the Borrower has paid additional amounts pursuant to this Section 4.4, it shall promptly pay to the Borrower the amount so received (but only to the extent of payments made, or additional amounts paid, by the Borrower under this Section 4.4 with respect to Taxes or Other Taxes giving rise to such Refund), net of all reasonable out-of-pocket expenses (including the net amount of taxes, if any, imposed on the Lender with respect to such Refund) of the Lender, and without interest (other than interest paid by the relevant Governmental Authority with respect to such Refund); provided, however, that the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower (plus penalties, interest or other charges) to the Lender in the event the Lender is required to repay such Refund to such Governmental Authority. Nothing contained in this Section 4.4(c) shall require the Lender to make available any of its tax returns (or any other information that it deems to be confidential or proprietary) or to alter its tax accounting practices.

(d) Foreign Lender. If the Lender (which, for purposes of this Section 4.4, shall include any Affiliate of the Lender that makes any Eurodollar Loan pursuant to the terms of this Credit Agreement) is not a “United States person” (as such term is defined in Section 7701(a)(30) of the Code) it shall submit to the Borrower on or before the Closing Date, two duly completed and signed copies of (1) Form W-8BEN or W-8BEN-E, as applicable, of the United States Internal Revenue Service, or a successor applicable form, entitling the Lender to a complete exemption from withholding on all amounts to be received by the Lender pursuant to this Credit Agreement and/or any Notes, (2) Form W-8ECI of the United States Internal Revenue Service, or a successor applicable form, relating to all amounts to be received by the Lender pursuant to this Credit Agreement and/or any Notes or (3) any other form (together with supplementary documentation) prescribed by applicable Laws entitling the Lender to a complete exemption from United States withholding tax. The Lender shall, from time to time after submitting either such form, submit to the Borrower such additional duly completed and signed copies of such forms (or such successor forms or other documents as shall be adopted from time to time by the relevant United States taxing authorities) as may be (1) reasonably requested in writing by the Borrower and (2) appropriate under then current United States laws or regulations. If and for any period during which the provisions of this Section 4.4(d) are not satisfied by or with respect to the Lender, no provision of this Credit Agreement shall require the Borrower to indemnify with respect to any resulting withholding of United States taxes imposed on or with respect to the Lender as a result of such noncompliance for the periods to which such noncompliance relates, unless such noncompliance is directly attributable to a change in a law, rule or regulation issued by a Governmental Authority which results in the inability of the Lender to provide such form. If a payment made to the Lender hereunder would be subject to United States federal withholding tax imposed by FATCA if the Lender were to fail to comply with the applicable requirements of FATCA, the Lender shall deliver to the Borrower, at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower, such documentation prescribed by applicable Law and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA, to determine that the Lender has or has not complied with the Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(e) United States Lender. If the Lender is a United States Person, it shall, on or prior to the date it becomes a party hereto and from time to time thereafter if requested in writing by the Borrower, provide the Borrower with a properly completed and duly executed copy of Internal Revenue Service Form W-9, or any successor to such form.

#### **4.5 Mitigation.**

The Lender shall use reasonable efforts to avoid or mitigate any increased cost or suspension of the availability of an interest rate or the payment of Taxes or Other Taxes under Sections 4.1 through 4.4 above to the greatest extent practicable (including transferring the Revolving Loans to another lending office or Affiliate of the Lender) unless, in the reasonable opinion of the Lender, such efforts would be likely to have an adverse effect upon it.

### **SECTION 5.**

#### **CONDITIONS PRECEDENT**

##### **5.1 Closing Conditions.**

The obligation of the Lender to enter into this Credit Agreement is subject to satisfaction of the following conditions on or prior to the Closing Date (in form and substance acceptable to the Lender):

(a) Executed Credit Documents. Receipt by the Lender of duly executed copies of (i) this Credit Agreement and (ii) the Note.

(b) Officer's Certificate. Receipt by the Lender of a certificate of a Responsible Officer of the Borrower stating that, as of the Closing Date, (i) there exists no Default or Event of Default, (ii) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects, (iii) the Borrower is in compliance with the financial covenant set forth in Section 7.11, as demonstrated by the covenant calculations on a schedule attached thereto and (iv) the conditions set forth in Sections 5.1(g) and (i) have been satisfied.

(c) Opinion of Counsel. Receipt by the Lender of an opinion, or opinions, satisfactory to the Lender, addressed to the Lender from legal counsel to the Borrower.

(d) Corporate Documents. Receipt by the Lender of the following:

(i) Charter Documents. (A) A copy of the Borrower's Articles of Incorporation, certified by the Secretary of State of the State of Florida or (B) a representation that the Borrower's Articles of Incorporation have not changed since the date of delivery of the certificate of the Secretary of State pursuant to the Existing Credit Agreement.

(ii) Bylaws. A copy of the bylaws of the Borrower certified by a secretary or assistant secretary of the Borrower to be true and correct as of the Closing Date.

(iii) Resolutions. Copies of resolutions of the Board of Directors of the Borrower approving and adopting the Credit Documents to which it is a party and the transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of the Borrower to be true and correct and in force and effect as of the Closing Date.

(iv) Good Standing. Copies of (A) certificates of good standing, existence or its equivalent with respect to the Borrower certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of incorporation and the

principal place of business of the Borrower and (B) to the extent available, a certificate indicating payment of all corporate franchise taxes certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of its incorporation and the principal place of business of the Borrower.

(v) Incumbency. An incumbency certificate of the Borrower, certified by a secretary or assistant secretary of the Borrower to be true and correct as of the Closing Date.

(e) Financial Statements. Receipt by the Lender of (i) the consolidated audited financial statements of the Borrower dated as of December 31, 2014, including balance sheets and income and cash flow statements, in each case audited by independent public accountants of recognized standing and prepared in accordance with GAAP and (ii) the consolidated unaudited quarterly financial statements of the Borrower for the three month periods as of and for March 31, 2015, June 30, 2015 and September 30, 2015, including balance sheets and income and cash flow statements, in each case prepared in accordance with GAAP.

(f) Fees and Expenses. Payment by the Borrower of all fees and expenses owed by it to the Lender, including, without limitation, payment of the upfront fee payable pursuant to Section 3.4(b).

(g) Material Adverse Effect. No event or condition shall have occurred since the date of the financial statements delivered pursuant to Section 5.1(e) above that has had or would be likely to have a Material Adverse Effect.

(h) [Reserved.]

(i) Litigation. Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2014, in the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2015 and in any current report on Form 8-K filed by the Borrower between December 31, 2014 and the Closing Date, there shall not exist any action, suit, investigation or proceeding, nor shall any action, suit or investigation be pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority that materially adversely affects the Borrower or any transaction contemplated hereby or the ability of the Borrower to perform its obligations under the Credit Documents.

(j) Other. Receipt by the Lender of such other documents, instruments, agreements or information as reasonably requested by the Lender.

## **5.2 Conditions to Loans.**

In addition to the conditions precedent stated elsewhere herein, the Lender shall not be obligated to make any Revolving Loans hereunder unless:

(a) Request. The Borrower shall have timely delivered a duly executed and completed Notice of Borrowing of Revolving Loans in conformance with all the terms and conditions of this Credit Agreement;

(b) Representations and Warranties. The representations and warranties made by the Borrower in the Credit Documents are true and correct in all material respects at and as if made as



of the date of the funding of the requested Revolving Loans; provided, that this Section 5.2(b) shall not apply to the representations set forth in Sections 6.6, 6.8 and 6.9; and

(c) No Default. On the date of the funding of the requested Revolving Loans, no Default or Event of Default has occurred and is continuing or would be caused by making the requested Revolving Loans, including, without limitation, the restrictions on (i) the amount of Revolving Loans that may be outstanding as set forth in Section 2.1 and (ii) the use of proceeds set forth in Section 7.9.

The delivery of each Notice of Borrowing of Revolving Loans shall constitute a representation and warranty by the Borrower of the correctness of the matters specified in subsections (b) and (c) above.

## **SECTION 6.**

### **REPRESENTATIONS AND WARRANTIES**

The Borrower hereby represents and warrants to the Lender that:

#### **6.1 Organization and Good Standing.**

The Borrower and each Significant Subsidiary (a) is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (b) is duly qualified and in good standing as a foreign corporation authorized to do business in every jurisdiction where the failure to so qualify would have a Material Adverse Effect and (c) has the requisite corporate power and authority to own its properties and to carry on its business as now conducted and as proposed to be conducted.

#### **6.2 Due Authorization.**

The Borrower (a) has the requisite corporate power and authority to execute, deliver and perform this Credit Agreement and the other Credit Documents and to incur the obligations herein and therein provided for and (b) is duly authorized to, and has been authorized by all necessary corporate action, to execute, deliver and perform this Credit Agreement and the other Credit Documents.

#### **6.3 No Conflicts.**

Neither the execution and delivery of the Credit Documents, nor the consummation of the transactions contemplated therein, nor performance of and compliance with the terms and provisions thereof by the Borrower will (a) violate or conflict with any provision of its certificate or articles of incorporation or bylaws, (b) violate, contravene or materially conflict with any law, regulation (including without limitation, Regulation D, U or X), order, writ, judgment, injunction, decree or permit applicable to it, (c) violate, contravene or materially conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which could have a Material Adverse Effect or (d) result in or require the creation of any Lien upon or with respect to its properties.

#### **6.4 Consents.**

No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or

performance of this Credit Agreement or any of the other Credit Documents that has not been obtained, except for an order or orders of the FPSC and/or the Federal Energy Regulatory Commission, which order or orders will be obtained (if required) prior to, and will be in effect on, the date of any Revolving Loans hereunder.

#### **6.5 Enforceable Obligations.**

This Credit Agreement and the other Credit Documents have been duly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

#### **6.6 Financial Condition.**

The financial statements provided to the Lender as described in Section 5.1(e): (a) fairly present the financial condition and operations of the Borrower as of the date thereof and (b) were prepared in accordance with GAAP.

#### **6.7 No Default.**

No Default or Event of Default presently exists.

#### **6.8 Indebtedness and Off Balance Sheet Indebtedness.**

As of the Closing Date, the Borrower and its Subsidiaries have no Indebtedness except as disclosed in the financial statements referenced in Section 5.1(e) and as otherwise incurred in the ordinary course. Set forth on the Borrower's Annual Report on Form 10-K for the year ended December 31, 2014 and the Borrower's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 is a specific description of all material Off Balance Sheet Indebtedness of the Borrower and its Subsidiaries as of the periods covered thereby.

#### **6.9 Litigation.**

Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2014, in the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2015 and in any current report on Form 8-K filed by the Borrower between December 31, 2014 and the Closing Date, there are no actions, suits or legal, equitable, arbitration or administrative proceedings, pending or, to the knowledge of the Borrower, threatened against the Borrower or a Significant Subsidiary, in which there is a reasonable possibility of an adverse decision which has had or would be reasonably expected to have a Material Adverse Effect.

#### **6.10 [Reserved]**

#### **6.11 Taxes.**

The Borrower has filed, or caused to be filed, all tax returns (federal, state, local and foreign) required to be filed and paid all amounts of taxes shown thereon to be due (including interest and penalties) and has paid all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes or returns (a) which are not yet delinquent, (b) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP or (c)

which are not, either individually or in the aggregate, considered material. The Borrower is not aware of any proposed material tax assessments against it.

#### **6.12 Compliance with Law.**

The Borrower is in compliance with all laws, rules, regulations, orders and decrees applicable to it, or to its properties, unless (a) such failure to comply would not have a Material Adverse Effect, or (b) the necessity of compliance therewith is being contested in good faith and by proper proceedings.

#### **6.13 ERISA.**

There have been no ERISA Events that are continuing and either singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower each Pension Plan has been administered with the applicable provisions of ERISA and the Code, and there are no pending, or to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by a Governmental Authority, with respect to any Pension Plan (other than claims for benefits and funding obligations in the ordinary course and PBGC premiums due but not delinquent), except where such non-compliance, claim, lawsuit or action either singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No termination of a Pension Plan has occurred, and no Lien in favor of the PBGC or a Pension Plan has arisen, which would reasonably be expected to have a Material Adverse Effect. The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by an amount that could reasonably be expected to have a Material Adverse Effect. The Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules with respect to each Pension Plan except where the failure to meet such requirements would not reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any ERISA Affiliate has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

#### **6.14 Use of Proceeds; Margin Stock.**

The proceeds of the Revolving Loans hereunder (a) will be used solely for the purposes specified in Section 7.9 and (b) will not be used in a manner that would cause a violation of Regulation U or Regulation X.

#### **6.15 Investment Company Act.**

The Borrower is not an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended, or controlled by such a company.

#### **6.16 Solvency.**

The Borrower is solvent. For purposes of the preceding sentence, “solvent” means (a) the fair saleable value (on a going concern basis) of the Borrower’s assets exceed its liabilities, contingent or otherwise, fairly valued, (b) the Borrower will be able to pay its debts as they become due and (c) upon paying its debts as they become due, the Borrower will not be left with unreasonably small capital as is necessary to satisfy all of its current and reasonably anticipated obligations.

## **6.17 OFAC.**

Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower and its Subsidiaries, any director, officer or employee thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List or (iii) located, organized or resident in a Designated Jurisdiction.

## **6.18 Anti-Corruption Laws.**

To the extent applicable, the Borrower and each of its Subsidiaries conducts its businesses in compliance, in all material respects, with the United States Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010 and maintains policies and procedures designed to promote and achieve compliance with such laws.

# **SECTION 7.**

## **AFFIRMATIVE COVENANTS**

The Borrower hereby covenants and agrees that so long as this Credit Agreement is in effect and until the Revolving Loans, together with interest, fees and other obligations hereunder (other than contingent indemnification obligations not yet due and payable), have been paid in full and the Revolving Loan Commitment hereunder shall have terminated:

### **7.1 Information Covenants.**

The Borrower will furnish, or cause to be furnished, to the Lender:

(a) Annual Financial Statements. As soon as available, and in any event within 120 days after the close of each fiscal year of the Borrower, a consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of the end of such fiscal year, together with related statements of operations and retained earnings and of cash flows for such fiscal year, setting forth in comparative form figures for the preceding fiscal year, all such financial information described above to be in reasonable form and detail and audited by independent certified public accountants of recognized national standing reasonably acceptable to the Lender and whose opinion shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur) and shall not be limited as to the scope of the audit or qualified as to going concern. To the extent that the information set forth in this Section 7.1(a) is included in the Borrower's annual report on Form 10-K as filed with the Securities and Exchange Commission, such information shall be deemed delivered for purposes hereof.

(b) Quarterly Financial Statements. As soon as available, and in any event within 55 days after the close of each fiscal quarter of the Borrower (other than the fourth fiscal quarter) a consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of the end of such fiscal quarter, together with related statements of operations and retained earnings and of cash flows for such fiscal quarter in each case setting forth in comparative form figures for the corresponding period of the preceding fiscal year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Lender, and accompanied by a certificate of the chief financial officer of the Borrower to the effect that such

quarterly financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments. To the extent that the information set forth in this Section 7.1(b) is included in the Borrower's quarterly report on Form 10-Q as filed with the Securities and Exchange Commission, such information shall be deemed delivered for purposes hereof.

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(a) and 7.1(b) above, a certificate of the chief financial officer, treasurer or any assistant treasurer of the Borrower, substantially in the form of Exhibit 7.1(c), (i) demonstrating compliance with the financial covenant contained in Section 7.11 by calculation thereof as of the end of each such fiscal period and (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto.

(d) Notices. Upon a Responsible Officer of the Borrower obtaining knowledge thereof, the Borrower will give written notice to the Lender as soon as administratively practicable of (i) the occurrence of an event or condition consisting of a Default or Event of Default, specifying the nature and existence thereof and what action the Borrower proposes to take with respect thereto, and (ii) the occurrence of any of the following with respect to the Borrower: (A) the pendency or commencement of any litigation, arbitral or governmental proceeding against the Borrower which, if adversely determined, is likely to have a Material Adverse Effect, (B) the institution of any proceedings against the Borrower with respect to, or the receipt of notice by the Borrower of potential liability or responsibility for, violation or alleged violation of any federal, state or local law, rule or regulation, the violation of which would likely have a Material Adverse Effect or (C) any notice concerning the imposition of any withdrawal liability by a Multiemployer Plan against the Borrower or any of its ERISA Affiliates or the termination of any Pension Plan in a distress termination.

(e) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Borrower as the Lender may reasonably request.

Documents required to be delivered pursuant to Section 7.1 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which the Lender has access; provided that: the Borrower shall deliver paper copies of such documents to the Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Lender.

## **7.2 Preservation of Existence and Franchises.**

The Borrower will, except as permitted by Section 8.2, do all things necessary to preserve and keep in full force and effect its existence, rights, franchises and authority.



### **7.3 Books and Records.**

The Borrower will keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

### **7.4 Compliance with Law.**

The Borrower will comply with all laws, rules, regulations, orders and decrees, and all restrictions imposed by all Governmental Authorities, applicable to it and its property (a) if noncompliance with any such law, rule, regulation, order or restriction would be reasonably expected to have a Material Adverse Effect or (b) unless the necessity of compliance therewith is being contested in good faith and by proper proceedings.

### **7.5 Payment of Taxes.**

The Borrower will pay and discharge all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent; provided, however, that the Borrower shall not be required to pay (a) any such tax, assessment, charge, levy, or claim which is being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been established in accordance with GAAP or (b) any such taxes which are not, either individually or in the aggregate, considered material.

### **7.6 Insurance.**

The Borrower will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice.

### **7.7 Performance of Obligations.**

The Borrower will perform in all material respects all of its obligations under the terms of all material agreements to which it is a party or by which it is bound (other than agreements, indentures, mortgages, security agreements or other instruments relating to Indebtedness) unless (i) Borrower's nonperformance of any such agreement would not reasonably be expected to have a Material Adverse Effect or (ii) the necessity of performance thereof is being contested in good faith and by proper proceedings.

### **7.8 ERISA.**

The Borrower shall, and shall, to the extent practicable, cause each of its ERISA Affiliates to: (a) maintain each Pension Plan in compliance with the applicable provisions of ERISA, the Code and other applicable federal or state law; and (b) make all required contributions to any Pension Plan subject to Section 412 or Section 430 of the Code and all contributions required of the Borrower and its ERISA Affiliates to any Multiemployer Plan subject to Section 431 of the Code; except in each such instance in clause (a) or (b) where the failure to do so, either singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

### **7.9 Use of Proceeds.**

The proceeds of the Revolving Loans may be used solely (a) to provide credit support for the Borrower's commercial paper program (including SCFC Notes), (b) for working capital for the Borrower, (c) to provide credit support for tax exempt pollution control bond issuances and (d) for other general corporate purposes, including, without limitation, acquisitions.

### **7.10 Audits/Inspections.**

Upon reasonable notice and during normal business hours, the Borrower will permit representatives appointed by the Lender, including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect the Borrower's property, including its books and records, its accounts receivable and inventory, the Borrower's facilities and its other business assets, and to make photocopies or photographs thereof and to write down and record any information such representative obtains and shall permit the Lender or its representatives to investigate and verify the accuracy of information provided to the Lender and to discuss all such matters with the officers, employees and representatives of the Borrower. So long as there is not a Default or Event of Default or unless Borrower otherwise consents, such visits and inspections shall be limited to once per calendar year.

### **7.11 Indebtedness to Capitalization.**

The ratio of (a) Indebtedness of the Borrower and its consolidated Subsidiaries to (b) Capitalization shall at all times be less than or equal to .65 to 1.0.

## **SECTION 8.**

### **NEGATIVE COVENANTS**

The Borrower hereby covenants and agrees that so long as this Credit Agreement is in effect and until the Revolving Loans, together with interest, fees and other obligations hereunder (other than contingent indemnification obligations not yet due and payable), have been paid in full and the Revolving Loan Commitment hereunder shall have terminated:

#### **8.1 Nature of Business.**

The Borrower will not alter the character of its business from that conducted as of the Closing Date.

#### **8.2 Consolidation and Merger.**

The Borrower will not enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); provided that notwithstanding the foregoing provisions of this Section 8.2, the following actions may be taken if after giving effect thereto no Default or Event of Default exists:

(a) a Subsidiary of the Borrower may be merged or consolidated with or into the Borrower; provided that the Borrower shall be the continuing or surviving corporation; and

(b) the Borrower may merge or consolidate with any other Person (other than one of its Subsidiaries) if either (i) the Borrower shall be the continuing or surviving corporation or (ii) the Borrower shall not be the continuing or surviving corporation and the corporation so

continuing or surviving (A) is a corporation organized and duly existing under the law of any state of the United States, (B) has (1) a long term, senior, unsecured, non-credit enhanced debt rating of BBB- or better from S&P and Baa3 or better from Moody's or (2) a commercial paper rating of A-2 or better from S&P and P-2 or better from Moody's and (C) executes and delivers to the Lender an instrument in form reasonably satisfactory to the Lender pursuant to which it expressly assumes the Revolving Loans and all of the other obligations of the Borrower under the Credit Documents and procures for the Lender an opinion in form reasonably satisfactory to the Lender in respect of the due authorization, execution, delivery and enforceability of such instrument and covering such other matters as the Lender may reasonably request; provided that prior to any such merger or consolidation, the Borrower shall have delivered to the Lender a certificate demonstrating that, upon giving effect to such merger or consolidation on a pro forma basis, the Borrower will be in compliance with Section 7.11.

### **8.3     Sale or Lease of Assets.**

Except as permitted by Section 8.2, the Borrower will not convey, sell, lease, transfer or otherwise dispose of in one transaction or a series of transactions, all or substantially all of its business or assets whether now owned or hereafter acquired.

### **8.4     Transactions with Affiliates.**

Except as otherwise required by law, the Borrower will not enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any of its Affiliates other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an Affiliate.

### **8.5     Fiscal Year.**

The Borrower will not change its fiscal year (a) without prior written notification to the Lender and (b) if such change would materially affect the Lender's ability to read and interpret the financial statements delivered pursuant to Section 7.1 or calculate the financial covenant in Section 7.11.

### **8.6     Liens.**

The Borrower will not contract, create, incur, assume or permit to exist any Lien with respect to any of its property or assets of any kind (whether real or personal, tangible or intangible), whether now owned or hereafter acquired, securing any Indebtedness unless the Revolving Loans hereunder are equally and ratably secured with such other Indebtedness other than the following: (a) Liens securing Borrower Obligations, (b) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (c) Liens in respect of property imposed by law arising in the ordinary course of business such as materialmen's, mechanics', warehousemen's, carrier's, landlords' and other nonconsensual statutory Liens which are not yet due and payable, which have been in existence less than 90 days or which are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (d) pledges or deposits made in the ordinary course of business to secure payment of worker's compensation insurance, unemployment insurance, pensions or social security programs, other than any Lien imposed by ERISA, (e) Liens arising from good faith deposits in connection with or to secure performance of tenders, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations

incurred in the ordinary course of business (other than obligations in respect of the payment of borrowed money), (f) Liens arising from good faith deposits in connection with or to secure performance of statutory obligations and surety and appeal bonds (unless such Lien is in connection with a judgment that has caused an Event of Default pursuant to Section 9.1(g)), (g) easements, rights-of-way, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances not, in any material respect, impairing the use of the encumbered property for its intended purposes, (h) judgment Liens that would not constitute an Event of Default, (i) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights as to deposit accounts or other funds maintained with a creditor depository institution, (j) any Lien created or arising over any property which is acquired, constructed or created by the Borrower, but only if (i) such Lien secures only principal amounts (not exceeding the cost of such acquisition, construction or creation) raised for the purposes of such acquisition, construction or creation, together with any costs, expenses, interest and fees incurred in relation thereto or a guarantee given in respect thereof, (ii) such Lien is created or arises on or before 360 days after the completion of such acquisition, construction or creation and (iii) such Lien is confined solely to the property so acquired, constructed or created and any improvements thereto, (k) any Lien on any property or assets acquired from a corporation or other entity which is merged with or into the Borrower in accordance with Section 8.2, and is not created in anticipation of any such transaction (unless such Lien is created to secure or provide for the payment of any part of the purchase price of such corporation or other entity), (l) any Lien on any property or assets existing at the time of acquisition of such property or assets by the Borrower and which is not created in anticipation of such acquisition (unless such Lien was created to secure or provide for the payment of any part of the purchase price of such property or assets), (m) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Liens referred to in the foregoing clauses (a) through (l), for amounts not exceeding the principal amount of the Indebtedness secured by the Lien so extended, renewed or replaced, provided that such extension, renewal or replacement Lien is limited to all or a part of the same property or assets that were covered by the Lien extended, renewed or replaced (plus improvements on such property or assets) and (n) Liens on property, in addition to those otherwise permitted by clauses (a) through (m) above, securing, directly or indirectly, Indebtedness which does not exceed, in the aggregate at any one time outstanding, the greater of (i) \$100,000,000.00 or (ii) ten percent (10%) of Net Tangible Assets.

#### **8.7     Sanctions.**

The Borrower shall not, directly or, to the knowledge of the Borrower, indirectly, use any Revolving Loans or the proceeds of any Revolving Loans, or lend, contribute or otherwise make available such Revolving Loans or the proceeds of any Revolving Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will, to the knowledge of the Borrower, result in a violation by any Person (including any Person participating in the transaction, whether as Lender or otherwise) of Sanctions.

#### **8.8     Anti-Corruption Laws.**

The Borrower shall not, directly or indirectly, use the proceeds of any Revolving Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977 or the UK Bribery Act 2010.

## SECTION 9.

### EVENTS OF DEFAULT

#### 9.1 Events of Default.

An Event of Default shall exist upon the occurrence of any of the following specified events (each an “Event of Default”):

(a) Payment. The Borrower shall:

(i) default in the payment when due of any principal of any of the Revolving Loans; or

(ii) default, and such default shall continue for five or more Business Days, in the payment when due of any interest on the Revolving Loans or of any fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith.

(b) Representations. Any representation, warranty or statement made or deemed to be made by the Borrower herein, in any of the other Credit Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made; provided, however, that if such untrue representation, warranty or statement is capable of being remedied, it shall not be an Event of Default if the Borrower remedies such untrue representation, warranty or statement within ten (10) Business Days of any Responsible Officer of the Borrower obtaining actual knowledge thereof.

(c) Covenants. The Borrower shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.2, 7.3, 7.4, 7.9, 7.11 or 8.1 through 8.8, inclusive; or

(ii) default in the due performance or observance by it of any term, covenant or agreement contained in Section 7.1(a), (b), (c) or (d) and such default shall continue unremedied for a period of ten Business Days after the earlier of an officer of the Borrower becoming aware of such default or written notice thereof given by the Lender; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b), (c)(i) or (c)(ii) of this Section 9.1) contained in this Credit Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 days after the earlier of an officer of the Borrower becoming aware of such default or written notice thereof given by the Lender.

(d) Credit Documents. Any Credit Document shall fail to be in full force and effect or to give the Lender the rights, powers and privileges purported to be created thereby.

(e) Bankruptcy, etc. The occurrence of any of the following with respect to the Borrower or a Significant Subsidiary: (i) a court or governmental agency having jurisdiction in



the premises shall enter a decree or order for relief in respect of the Borrower or a Significant Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or a Significant Subsidiary or for any substantial part of its property or ordering the winding up or liquidation of its affairs; or (ii) an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect is commenced against the Borrower or a Significant Subsidiary and such petition remains unstayed and in effect for a period of 60 consecutive days; or (iii) the Borrower or a Significant Subsidiary shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or any substantial part of its property or make any general assignment for the benefit of creditors; or (iv) the Borrower or a Significant Subsidiary shall admit in writing its inability to pay its debts generally as they become due or any action shall be taken by such Person in furtherance of any of the aforesaid purposes.

(f) Defaults under Other Agreements. With respect to any Indebtedness (other than the Indebtedness under this Credit Agreement) of the Borrower or a Significant Subsidiary in a principal amount in excess of \$100,000,000, (i) the Borrower or such Significant Subsidiary shall (A) default in any payment (interest or principal) (beyond the applicable grace period with respect thereto, if any) with respect to any such Indebtedness, or (B) default (after giving effect to any applicable grace period) in the observance or performance of any covenant or agreement relating to such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default pursuant to this clause (B) or other event or condition is to cause, any such Indebtedness to become immediately due and payable; or (ii) any such Indebtedness shall be declared due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or (iii) any such Indebtedness matures and remains unpaid.

(g) Judgments. One or more judgments, orders, or decrees shall be entered against the Borrower or a Significant Subsidiary involving a liability of \$100,000,000 or more, in the aggregate, (to the extent not paid or covered by insurance provided by a carrier who has acknowledged coverage) and such judgments, orders or decrees shall continue unsatisfied, undischarged and unstayed for a period of at least 30 days after the last day on which such judgment, order or decree becomes final and unappealable and, where applicable, with the status of a judicial lien.

(h) ERISA. (i) An ERISA Event occurs which is continuing and has resulted or would reasonably be expected to result in liability of the Borrower or any ERISA Affiliate in an aggregate amount in excess of \$100,000,000, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$100,000,000; or

(i) Change of Control. The occurrence of any Change of Control.

## **9.2 Acceleration; Remedies.**

Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by the Lender or cured to the satisfaction of the Lender, the Lender

may, by written notice to the Borrower, take any of the following actions without prejudice to the rights of the Lender to enforce its claims against the Borrower, except as otherwise specifically provided for herein:

(i) Termination of Revolving Loan Commitment. Declare the Revolving Loan Commitment terminated whereupon the Revolving Loan Commitment shall be immediately terminated.

(ii) Acceleration of Revolving Loans. Declare the unpaid principal of and any accrued interest in respect of all Revolving Loans and any and all other indebtedness or obligations of any and every kind owing by the Borrower to the Lender hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

(iii) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Credit Documents, including, without limitation, all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(e) shall occur, then (a) the Revolving Loan Commitment shall automatically terminate and (b) all Revolving Loans, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Lender hereunder shall immediately become due and payable, without the giving of any notice or other action by the Lender.

### **9.3 Allocation of Payments after Event of Default.**

Notwithstanding any other provisions of this Credit Agreement, after the exercise of any remedies by the Lender pursuant to Section 9.2 (or after the Revolving Loan Commitment shall automatically terminate and the Revolving Loans (with accrued interest thereon) and all other amounts under the Credit Documents shall automatically become due and payable in accordance with the terms of such Section), all amounts collected or received by the Lender on account of amounts outstanding under any of the Credit Documents shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Lender in connection with enforcing the rights of the Lender under the Credit Documents;

SECOND, to payment of any fees owed to the Lender;

THIRD, to the payment of all accrued interest payable to the Lender hereunder;

FOURTH, to the payment of the outstanding principal amount of the Revolving Loans and all other Borrower Obligations which shall have become due and payable under the Credit Documents; and

FIFTH, the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category.

## **SECTION 10.**

### **[RESERVED]**

## **SECTION 11.**

### **MISCELLANEOUS**

#### **11.1 Notices and other Communications; Facsimile Copies.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or electronic communication, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.1 (as such information may be modified from time to time by written notice from such Person to the other party hereto).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Lender. The Borrower and the Lender hereby agree to accept notices and other communications to it hereunder by electronic communications pursuant to the procedures in this Section 11.1.

Unless the parties agree otherwise, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) Change of Address, Etc. Each of the Borrower and the Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto.

(c) Reliance by Lender. The Lender shall be entitled to rely and act upon any notices given by the Borrower even if such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein. All telephonic notices to and other communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

### **11.2 Right of Set-Off.**

In addition to any rights now or hereafter granted under applicable Law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default and the commencement of remedies described in Section 9.2, the Lender is authorized at any time and from time to time, without presentment, demand, protest or other notice of any kind (all of which rights being hereby expressly waived), to set-off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by the Lender (including, without limitation branches, agencies or Affiliates of the Lender wherever located) to or for the credit or the account of the Borrower against obligations and liabilities of the Borrower to the Lender hereunder, under any Note, the other Credit Documents or otherwise, irrespective of whether the Lender shall have made any demand hereunder and although such obligations, liabilities or claims, or any of them, may be contingent or unmatured, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of the Lender subsequent thereto. The Borrower hereby agrees that any Participation Purchaser may exercise all rights of set-off with respect to its participation interest as fully as if such Person were a Lender hereunder.

### **11.3 Benefit of Agreement.**

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that, other than as permitted by Section 8.2, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender.

(b) The Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participation Purchaser") in all or a portion of the Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Revolving Loan Commitment and/or the Revolving Loans owing to it); provided that (i) the Lender's obligations under this Credit Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the Borrower for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Credit Agreement. Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that the Lender will not, without the consent of the Participation Purchaser, agree to any amendment, waiver or other modification described in Section 11.6 that directly affects such Participation Purchaser. Subject to subsection (c) of this Section, the Borrower agrees that each Participation Purchaser shall be entitled to the benefits of Sections 4.1 through 4.4 to the same extent as if it were a Lender. To the extent permitted by law, each Participation Purchaser also shall be entitled to the benefits of Section 11.2 as though it were a Lender, provided such Participation Purchaser agrees to be subject to Section 3.8 as though it were a Lender.

(c) A Participation Purchaser shall not be entitled to receive any greater payment under Section 4.2 or 4.4 than the Lender would have been entitled to receive with respect to the participation sold to such Participation Purchaser, unless the sale of the participation to such Participation Purchaser is made with the Borrower's prior written consent. A Participation Purchaser that would be a "foreign corporation, partnership or trust" within the meaning of the Code if it were the Lender shall not be entitled to the benefits of Section 4.4 unless the Borrower is notified of the participation sold to such Participation Purchaser and such Participation

Purchaser agrees, for the benefit of the Borrower, to comply with Section 4.4(d) as though it were a Lender.

(d) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under the Note, if any) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

#### **11.4 No Waiver; Remedies Cumulative.**

No failure or delay on the part of the Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower and the Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Lender would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Lender to any other or further action in any circumstances without notice or demand.

#### **11.5 Payment of Expenses, etc.**

The Borrower agrees to: (i) pay all reasonable out-of-pocket costs and expenses of (A) the Lender in connection with the negotiation, preparation, execution, delivery and administration of this Credit Agreement and the other Credit Documents and the documents and instruments referred to therein (including, without limitation, the reasonable fees and expenses of a single special counsel to the Lender) and any amendment, waiver, consent or assignment relating hereto and thereto including, but not limited to, any such amendments, waivers or consents resulting from or related to any work-out, renegotiation or restructure relating to the performance by the Borrower under this Credit Agreement and (B) the Lender in connection with enforcement of the Credit Documents and the documents and instruments referred to therein and any reasonable expenses incurred in connection with any work-out, renegotiation or restructure relating to the performance by the Borrower under this Credit Agreement (including, without limitation, in connection with any such enforcement, the reasonable fees and disbursements of counsel for the Lender) and (ii) indemnify the Lender and its Affiliates and its and their respective directors, officers, employees, counsel, agents, representatives and attorneys-in-fact from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not the Lender is a party thereto) related to the entering into and/or performance of any Credit Document or the use of proceeds of any Revolving Loans (including other extensions of credit) hereunder or the consummation of any other transactions contemplated in any Credit Document, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding; provided that the Borrower shall not be responsible for any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of gross negligence or willful misconduct on the part of the Person to be indemnified, in each case as found by a final, non-appealable judgment of a court of competent jurisdiction; and provided further that in no event shall the Borrower have any liability with respect to the settlement or compromise of any claim or proceeding effected without its prior written consent nor shall the Borrower be liable for the fees and disbursements of more than one firm of attorneys in connection with the same matter in the same jurisdiction for all



Persons indemnified. The agreements in this Section 11.5 shall survive the repayment of the Borrower Obligations and the termination of the Revolving Loan Commitment.

**11.6 Amendments, Waivers and Consents.**

Neither this Credit Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing and signed by the Lender and the Borrower.

**11.7 Counterparts; Telecopy.**

This Credit Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Credit Agreement to produce or account for more than one such counterpart. Delivery of executed counterparts by telecopy shall be as effective as an original and shall constitute a representation that an original will be delivered.

**11.8 Headings.**

The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

**11.9 [Reserved].**

**11.10 Survival of Indemnification and Representations and Warranties.**

All indemnities set forth herein and all representations and warranties made herein shall survive the execution and delivery of this Credit Agreement, the making of the Revolving Loans, and the repayment of the Revolving Loans and other obligations and the termination of the Revolving Loan Commitment hereunder.

**11.11 Governing Law; Jurisdiction.**

(a) THIS CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE PARTIES HERETO CONSENT TO SUCH GOVERNANCE, CONSTRUCTION AND INTERPRETATION UNDER THE LAWS OF THE STATE OF NEW YORK.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER OR ANY RELATED PARTY OF THE LENDER IN ANY WAY RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY

APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING IN THIS CREDIT AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN THE COURTS OF ANY JURISDICTION.

**11.12 Waiver of Jury Trial; Waiver of Consequential Damages.**

EACH OF THE PARTIES TO THIS CREDIT AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT, ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. The Borrower agrees that the Lender, any of its Affiliates and its and their respective officers, directors, employees, representatives, agents and attorneys-in-fact (each, an “Indemnified Party”) shall not have any liability for any indirect or consequential damages arising out of, related to or in connection with the Credit Documents except to the extent such damages were caused by reason of gross negligence or willful misconduct on the part of such Indemnified Party.

**11.13 Time.**

All references to time herein shall be references to Eastern Standard Time or Eastern Daylight time, as the case may be, unless specified otherwise.

**11.14 Severability.**

If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

**11.15 Entirety.**

This Credit Agreement together with the other Credit Documents represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

**11.16 Confidentiality.**

The Lender agrees that it will use its reasonable best efforts to keep confidential and to cause any representative designated under Section 7.10 to keep confidential any non-public information from time to time supplied to it under or in connection with any Credit Document including, without limitation, any such information furnished to the Lender prior to or in connection with its entry into any Credit

Document (the “Information”); provided, however, that nothing herein shall affect the disclosure of any such Information to (a) the extent the Lender in good faith believes such disclosure is required by statute, rule, regulation or judicial process or applicable Law or by subpoena or similar legal process, (b) the extent requested by any regulatory authority having jurisdiction over the Lender or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners) which has been notified of the confidential nature of such Information, (c) counsel for the Lender or to its accountants, (d) bank examiners or auditors or comparable Persons, (e) any Affiliate of the Lender, (f) (i) any participant or any direct contractual counterparties to any swap or derivative transaction relating to Borrower and its obligations or (ii) any potential participant of all or any portion of the Lender’s rights under this Credit Agreement, in each case who is notified of the confidential nature of the Information and agrees to be bound by this provision or provisions reasonably comparable hereto, (g) any other Person in connection with any litigation to which the Lender is a party, (h) to any credit insurance provider relating to the Borrower and its obligations, (i) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Credit Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder or (j) with the consent of the Borrower; and provided further that the Lender shall have no obligation under this Section 11.16 to the extent any such Information becomes available on a non-confidential basis from a source other than the Borrower or its Subsidiaries or that any Information becomes publicly available other than by a breach of this Section 11.16. The Lender agrees it will use all confidential Information exclusively for the purpose of evaluating, monitoring, selling, protecting or enforcing its Revolving Loans and other rights under the Credit Documents.

#### **11.17 Binding Effect.**

(a) This Credit Agreement shall become effective when it shall have been executed by the Borrower and the Lender and thereafter this Credit Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender, together with their respective successors and assigns. Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the indemnified parties hereunder) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Revolving Loans, interest, fees and other Borrower Obligations have been paid in full and the Revolving Loan Commitment has been terminated. Upon termination, the Borrower shall have no further obligations (other than the indemnification provisions that survive) under the Credit Documents; provided that should any payment, in whole or in part, of the Borrower Obligations be rescinded or otherwise required to be restored or returned by the Lender, whether as a result of any proceedings in bankruptcy or pursuant to court order, then the Credit Documents shall automatically be reinstated and all amounts required to be restored or returned and all costs and expenses incurred by the Lender in connection therewith shall be deemed included as part of the Borrower Obligations.

#### **11.18 USA Patriot Act Notice.**

The Lender, to the extent that it is subject to the Act (as hereinafter defined), hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower

and each of its Subsidiaries shall provide such information and take such actions as are reasonably requested by the Lender in order to assist the Lender in maintaining compliance with the Act.

**11.19 No Fiduciary Responsibility.**

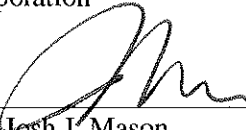
In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the services regarding this Credit Agreement provided by the Lender are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lender on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) the Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its respective Affiliates, or any other Person and (B) the Lender has no obligation to the Borrower or any of its respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (iii) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and the Lender has no obligation to disclose any of such interests to the Borrower and its respective Affiliates. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**[the remainder of this page intentionally left blank]**


Each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

**BORROWER:**

**GULF POWER COMPANY**, a Florida  
corporation

By:   
Josh J. Mason  
Assistant Treasurer

Attested to by:

By:   
Susan D. Ritenour  
Secretary and Treasurer



**LENDER:**

**JPMORGAN CHASE BANK, N.A., in its capacity as  
Lender**

By: 

Name: Peter Christensen

Title: Vice President

## FORM OF NOTICE OF BORROWING OF REVOLVING LOAN

TO: JPMorgan Chase Bank, N.A., as Lender

RE: Amended and Restated Credit Agreement dated as of November 18, 2015 between Gulf Power Company (the "Borrower") and JPMorgan Chase Bank, N.A., as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

---

1. This Notice of Borrowing is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.
2. Please be advised that the Borrower is requesting Revolving Loans in the amount of \$\_\_\_\_\_ to be funded on \_\_\_\_\_, 20\_\_ at the interest rate option set forth in paragraph 3 below.

Subsequent to the funding of the requested Revolving Loans, the aggregate amount of Revolving Loans outstanding will be \$\_\_\_\_\_ which is less than or equal to the Revolving Loan Commitment.

3. The interest rate option applicable to the requested Revolving Loans shall be:
  - a. \_\_\_\_\_ the Adjusted Base Rate
  - b. \_\_\_\_\_ the Adjusted Eurodollar Rate for an Interest Period of:
    - \_\_\_\_\_ one month
    - \_\_\_\_\_ two months
    - \_\_\_\_\_ three months
    - \_\_\_\_\_ six months

4. Unless notification to the contrary is received by the Lender prior to the date on which funds are to be advanced, as of the date on which funds are to be advanced, all representations and warranties required to be made pursuant to the Credit Agreement and the other Credit Documents will be true and correct in all material respects.
5. Unless notification to the contrary is received by the Lender prior to the date on which funds are to be advanced, as of the date on which funds are to be advanced, no Default or Event of Default will have occurred and be continuing or will be caused by this Notice of Borrowing.
6. Please credit the following account with the Revolving Loans requested pursuant to this Notice of Borrowing:

Bank: [                      ]

[                 ]  
ABA #: [                 ]  
Acct #: [                 ]  
Account Name: [                 ]

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## FORM OF NOTICE OF CONTINUATION/CONVERSION

TO: JPMorgan Chase Bank, N.A., as Lender

RE: Amended and Restated Credit Agreement dated as of November 18, 2015 between Gulf Power Company (the "Borrower") and JPMorgan Chase Bank, N.A., as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

1. This Notice of Continuation/Conversion is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.
2. Please be advised that the Borrower is requesting that a portion of the current outstanding Revolving Loans in the amount of \$ \_\_\_\_\_ currently accruing interest at \_\_\_\_\_ be continued or converted as of \_\_\_\_\_, 20\_\_ at the interest rate option set forth in paragraph 3 below.
3. The interest rate option applicable to the continuation or conversion of all or part of the existing Revolving Loans (as set forth above) shall be:
  - a. \_\_\_\_\_ the Adjusted Base Rate
  - b. \_\_\_\_\_ the Adjusted Eurodollar Rate for an Interest Period of:
    - \_\_\_\_\_ one month
    - \_\_\_\_\_ two months
    - \_\_\_\_\_ three months
    - \_\_\_\_\_ six months
4. Unless notification to the contrary is received by the Lender prior to the date on which Revolving Loans are to be continued or converted, as of the date on which Revolving Loans are to be continued or converted, all representations and warranties required to be made pursuant to the Credit Agreement and the other Credit Documents will be true and correct in all material respects.
5. Unless notification to the contrary is received by the Lender prior to the date on which Revolving Loans are to be continued or converted, as of the date on which Revolving Loans are to be continued or converted, no Default or Event of Default will have occurred and be continuing or will be caused by this Notice of Continuation/Conversion.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



FORM OF  
NOTE

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, GULF POWER COMPANY, an Florida corporation (the "Borrower"), hereby promises to pay to the order of JPMorgan Chase Bank, N.A. (the "Lender"), at the Lender's office as set forth in that certain Amended and Restated Credit Agreement dated as of November 18, 2015 between the Borrower and the Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement") (or at such other place or places as the holder of this Note may designate), the aggregate amount of all advances made by the Lender as Revolving Loans pursuant to the Lender's Commitment (and not otherwise repaid), in lawful money and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each Revolving Loan made by the Lender, at such office, in like money and funds, for the period commencing on the date of each Revolving Loan until each Revolving Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Note is the Note referred to in the Credit Agreement and evidences Revolving Loans made by the Lender thereunder. The Lender shall be entitled to the benefits of the Credit Agreement. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement and the terms and conditions of the Credit Agreement are expressly incorporated herein and made a part hereof.

The Credit Agreement provides for the acceleration of the maturity of the Revolving Loans evidenced by this Note upon the occurrence of certain events (and for payment of collection costs in connection therewith) and for prepayments of Revolving Loans upon the terms and conditions specified therein. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to the principal and interest, all costs of collection, including reasonable attorney fees.

This Note may not be assigned by the Lender to any other Person.

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed as of the date first above written.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attested to by:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## FORM OF COMPLIANCE CERTIFICATE

TO: JPMorgan Chase Bank, N.A., as Lender

RE: Amended and Restated Credit Agreement dated as of November 18, 2015 between Gulf Power Company (the "Borrower") and JPMorgan Chase Bank, N.A., as Lender (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement")

DATE: \_\_\_\_\_, 20\_\_

Pursuant to the terms of the Credit Agreement, I, \_\_\_\_\_, [Chief Financial Officer/ Treasurer/ Assistant Treasurer] of Gulf Power Company, hereby certify that, as of the fiscal quarter ending \_\_\_\_\_, 20\_\_, the statements and calculations below are accurate and complete in all respects (all capitalized terms used below shall have the meanings set forth in the Credit Agreement):

1. Compliance with Section 7.11:  
Ratio of Indebtedness to Capitalization

- |    |   |               |
|----|---|---------------|
| a. | Indebtedness                            | \$ _____      |
| b. | Capitalization                          | \$ _____      |
| c. | Ratio of Indebtedness to Capitalization | _____ : _____ |

Maximum Allowed: .65 : 1.0.

2. No Default or Event of Default exists except as indicated on a separate page attached hereto, together with an explanation of the action taken or proposed to be taken by the Borrower with respect thereto.

GULF POWER COMPANY,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PLACE AND MANNER OF PAYMENTS

All payments of principal, interest, fees, expenses and other amounts to be made by Borrower under this Agreement shall be made to the Lender as follows:

Lender's Principal Office to Receive Funds:

JPMorgan Chase Bank, N.A.  
500 Stanton Christiana Rd.  
Ops 2, Floor 3  
Newark, DE 19713

Wiring Instructions:

Pay to:	LS2 Incoming Account
Institution:	JPMorgan Chase Bank, N.A.
FED ABA#:	[REDACTED]
Account Number:	[REDACTED]
Reference:	Gulf Power Co

NOTICES

**BORROWER:**

Gulf Power Company  
1 Energy Place  
Pensacola, FL 32520-0780  
Attention: Susan D. Ritenour  
Tel: (850) 444-6231  
Fax: (850) 444-6026  
Email: [sdriteno@southernco.com](mailto:sdriteno@southernco.com)

Gulf Power Company  
30 Ivan Allen Jr. Boulevard, NW  
BIN SC1407  
Atlanta, Georgia 30308  
Attention: Dave Symons  
Tel: (404) 506-0782  
Fax: (404) 506-0717  
Email: [dsymons@southernco.com](mailto:dsymons@southernco.com)

Website: <http://www.gulfpower.com>

**LENDER:**

JPMorgan Chase Bank, N.A.  
500 Stanton Christiana Rd.  
Ops 2, Floor 3  
Newark, DE 19713  
Attention: Rea Seth  
Tel: (302) 634 – 1867  
Fax: (302)634 - 1417  
[LAS\\_-\\_Natural\\_Resources@jpmorgan.com](mailto:LAS_-_Natural_Resources@jpmorgan.com)  
[12012443630@tls.ldsprod.com](mailto:12012443630@tls.ldsprod.com)



## FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") is made effective as of November 8, 2017 (the "Effective Date"), between GULF POWER COMPANY, a Florida corporation, as borrower (the "Borrower"), and JPMorgan Chase Bank, N.A. (the "Lender").

### RECITALS

WHEREAS, the Borrower and the Lender entered into that certain Amended and Restated Credit Agreement, dated as of November 18, 2015 (the "Credit Agreement"), pursuant to which the Lender provides a revolving credit facility to the Borrower; and

WHEREAS, pursuant to Section 11.6 of the Credit Agreement, the Borrower and the Lender wish to amend the Credit Agreement to extend the Maturity Date;

NOW, THEREFORE, in consideration of the Recitals and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender, intending to be legally bound hereby, agree as follows:

SECTION 1. Definitions. All capitalized terms used, but not otherwise defined, herein, shall have the meanings assigned thereto in Section 1.1 of the Credit Agreement.

SECTION 2. Amendments. The definition of "Maturity Date" in Section 1.1 of the Credit Agreement is hereby amended by deleting the words "November 19, 2018" and inserting in their place "November 18, 2020."

SECTION 3. Conditions to Effectiveness. The effectiveness of this Amendment is subject to the satisfaction (or waiver by the Lender) of the following conditions:

(a) Executed Amendment. Receipt by the Lender of a duly executed counterpart of this Amendment by the Borrower.

(b) Legal Opinion. Receipt by the Lender of an opinion, or opinions, satisfactory to the Lender, addressed to the Lender from legal counsel to the Borrower.

(c) Officer's Certificate. Receipt by the Lender of a certificate of a Responsible Officer of the Borrower stating that, as of the Effective Date, (i) there exists no Default or Event of Default; (ii) all representations and warranties contained in the Credit Agreement (other than Sections 6.6, 6.8 and 6.9), this Amendment and the other Credit Documents are true and correct in all material respects; and (iii) the Borrower is in compliance with the financial covenant set forth in Section 7.11 of the Credit Agreement, as demonstrated by the covenant calculation on Schedule A attached thereto.

(d) Financial Statements. Receipt by the Lender of (i) the consolidated audited financial statements of the Borrower, dated as of December 31, 2016, including balance sheets and income and cash flow statements, in each case audited by independent public accountants of recognized standing and prepared in accordance with GAAP and (ii) the consolidated unaudited quarterly financial statements of the Borrower for the quarter ended September 30, 2017, including balance sheets and income and cash flow statements, in each case prepared in accordance with GAAP.

(e) Upfront Fee and Expenses. Payment by the Borrower to the Lender of (i) a fee equal to 0.10% multiplied by the Revolving Loan Commitment and (ii) all other reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution, delivery and administration of this Amendment (including, without limitation, the reasonable fees and expenses of counsel to the Lender).

(f) Material Adverse Effect. No event or condition shall have occurred since the date of the financial statements delivered pursuant to Section 3(d) above that has had or would be likely to have a Material Adverse Effect.

(g) Other. Receipt by the Lender of such other documents, instruments, agreements or information as reasonably requested by the Lender.

**SECTION 4. No Other Amendment.** The Credit Agreement, as amended by this Amendment, is and shall continue to be in full force and effect and is hereby in all respects ratified. This Amendment is not intended to effect, nor shall it be construed as, a novation. This Amendment shall be considered a Credit Document and the Credit Agreement and this Amendment shall be construed together as a single agreement. Nothing contained herein shall waive, annul, vary or affect any provision, condition, covenant or agreement contained in the Credit Agreement, except as herein amended, or affect or impair any rights, powers or remedies under the Credit Agreement as hereby amended. The Lender hereby reserves all of its rights and remedies against all parties who may be or may hereafter become secondarily liable for the repayment of the Revolving Loans. Each of the Borrower and the Lender reaffirms its obligations under the Credit Agreement and promises and agrees to perform all of the requirements, conditions, agreements and obligations under the terms of the Credit Agreement, as hereby amended. On and after the date of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended by this Amendment.

**SECTION 5. Representations and Warranties.** The Borrower hereby represents and warrants to the Lender as follows:

(a) No Default. No Default or Event of Default has occurred and is continuing unwaived in writing by the Lender on the date hereof or would be caused by entering into this Amendment.

(b) Due Authorization. The Borrower (i) has the requisite corporate power and authority to execute, deliver and perform this Amendment and to incur the obligations herein provided for and (ii) is duly authorized to, and has been authorized by all necessary corporate action to, execute, deliver and perform this Amendment.

(c) No Conflicts. Neither the execution and delivery of this Amendment, nor the consummation of the transactions contemplated herein, nor performance of and compliance with the terms and provisions hereof by the Borrower will (i) violate or conflict with any provision of its certificate or articles of incorporation or bylaws, (ii) violate, contravene or materially conflict with any law, regulation (including, without limitation, Regulation U or X), order, writ, judgment, injunction, decree or permit applicable to it, (iii) violate, contravene or materially conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which could have a Material Adverse Effect or (iv) result in or require the creation of any Lien upon or with respect to its properties.

(d) Consents. No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Amendment that has not been obtained.

(e) Enforceable Obligations. This Amendment has been duly executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

(f) Litigation. Except as disclosed in the Borrower's annual report on Form 10-K for the year ended December 31, 2016 and the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2017, or in any current report on Form 8-K filed by the Borrower between December 31, 2016 and the Effective Date, there are no actions, suits or legal, equitable, arbitration or administrative proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or a Significant Subsidiary, in which there is a reasonable possibility of an adverse decision which has or would be reasonably expected to have a Material Adverse Effect.

(g) Indebtedness and Off Balance Sheet Indebtedness. As of the date hereof, the Borrower and its Subsidiaries have no Indebtedness except as disclosed in the financial statements delivered pursuant to Section 3(d) above and as otherwise incurred in the ordinary course. Set forth in the Borrower's annual report on Form 10-K for the year ended December 31, 2016 and the Borrower's quarterly report on Form 10-Q for the quarter ended September 30, 2017, is a specific description of all material Off Balance Sheet Indebtedness of the Borrower and its Subsidiaries as of the periods covered thereby.

SECTION 6. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Amendment to produce or account for more than one such counterpart. Delivery of executed counterparts by telecopy or electronic transmission shall be as effective as an original and shall constitute a representation that an original will be delivered.

SECTION 7. Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Amendment.


SECTION 8. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE PARTIES HERETO CONSENT TO SUCH GOVERNANCE, CONSTRUCTION AND INTERPRETATION UNDER THE LAWS OF THE STATE OF NEW YORK.

Gulf Power Company  
First Amendment to Credit Agreement  
with JPMorgan Chase Bank, N.A.

Each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

**BORROWER:**

GULF POWER COMPANY, a Florida corporation

By:   
Josh J. Mason  
Assistant Treasurer

Attested to by:

By:   
Tracy G. Clark  
Assistant Secretary



Gulf Power Company  
First Amendment to Credit Agreement  
with JPMorgan Chase Bank, N.A.

**LENDER:**

JPMorgan Chase Bank, N.A.

By: \_\_\_\_\_  
Name: Bridget Killackey  
Title: Executive Director



**TERM LOAN AGREEMENT**  
**\$300,000,000 TERM LOAN FACILITY**

---

**BETWEEN**

**GULF POWER COMPANY,**  
**AS BORROWER**

**AND**

**[REDACTED],**  
**AS LENDER AND ADMINISTRATIVE AGENT**

**DATED AS OF SEPTEMBER 30, 2019**

---

## TABLE OF CONTENTS

5

Page

ARTICLE 1 - DEFINITIONS AND RULES OF INTERPRETATION.....	1
Section 1.01. Definitions.....	1
Section 1.02. Rules of Interpretation. ....	15
Section 1.03. Accounting Matters.....	16
ARTICLE 2 - LOANS. ....	16
Section 2.01. Term Loan.....	16
Section 2.02. Notice and Manner of Borrowing; Optional Prepayment.....	16
Section 2.03. Evidence of Indebtedness .....	18
Section 2.04. Mandatory Payment .....	18
Section 2.05. Interest.....	19
Section 2.06. Interest Rate Conversion or Continuation Options .....	19
Section 2.07. Computation of Interest and Fees .....	20
Section 2.08. Replacement of Lenders.....	21
ARTICLE 3 - CERTAIN GENERAL PROVISIONS. ....	21
Section 3.01. Funds for Payments.....	21
Section 3.02. Computations .....	22
Section 3.03. Inability to Determine Eurodollar Rate.....	22
Section 3.04. Illegality .....	23
Section 3.05. Additional Costs.....	24
Section 3.06. Capital Adequacy.....	24
Section 3.07. Recovery of Additional Compensation .....	25
Section 3.08. Indemnity .....	25
Section 3.09. Taxes .....	26
Section 3.10. Defaulting Lenders; Cure.....	30
ARTICLE 4 - REPRESENTATIONS AND WARRANTIES.....	31
Section 4.01. Corporate Authority .....	31
Section 4.02. Governmental Approvals .....	32
Section 4.03. Title to Properties.....	32
Section 4.04. Financial Statements .....	32
Section 4.05. Franchises, Patents, Copyrights, Etc.....	32

# TABLE OF CONTENTS

(continued)

4

Page

Section 4.06. Litigation.....	33
Section 4.07. Compliance With Other Instruments, Laws, Etc.....	33
Section 4.08. Tax Status.....	33
Section 4.09. No Default .....	33
Section 4.10. Investment Company Act.....	33
Section 4.11. Employee Benefit Plans .....	33
Section 4.12. Use of Proceeds.....	34
Section 4.13. Compliance with Margin Stock Regulations .....	34
Section 4.14. USA PATRIOT ACT, OFAC and Other Regulations .....	35
ARTICLE 5 - COVENANTS OF BORROWER .....	35
Section 5.01. Punctual Payment.....	35
Section 5.02. Maintenance of Office .....	35
Section 5.03. Records and Accounts .....	36
Section 5.04. Financial Statements, Certificates and Information .....	36
Section 5.05. Default Notification.....	37
Section 5.06. Corporate Existence: Maintenance of Properties.....	37
Section 5.07. Taxes .....	38
Section 5.08. Visits by Lenders .....	38
Section 5.09. Compliance with Laws, Contracts, Licenses, and Permits.....	38
Section 5.10. Use of Proceeds.....	38
Section 5.11. Prohibition of Fundamental Changes.....	38
Section 5.12. [Reserved.] .....	39
Section 5.13. Indebtedness.....	39
Section 5.14. Liens.....	39
Section 5.15. Maintenance of Insurance .....	40
Section 5.16. Employee Benefit Plans .....	41
Section 5.17. Compliance with Anti-Corruption Laws and Anti-Terrorism Regulations .....	41
Section 5.18. Financial Covenant .....	42
ARTICLE 6 - CONDITIONS PRECEDENT. ....	42
Section 6.01. Conditions Precedent to Effectiveness .....	42

# TABLE OF CONTENTS

(continued)

4

Page

ARTICLE 7 - EVENTS OF DEFAULT, ACCELERATION, ETC.....	43
Section 7.01. Events of Default .....	43
Section 7.02. Lenders' Remedies.....	45
ARTICLE 8 - SHARING.....	45
Section 8.01. Sharing Among Lenders .....	45
Section 8.02. Borrower's Offset Rights.....	46
ARTICLE 9 - AGENT.....	46
<b>Section 9.01 Appointment and Authority .....</b>	<b>46</b>
<b>Section 9.02 Rights as a Lender .....</b>	<b>46</b>
<b>Section 9.03 Exculpatory Provisions .....</b>	<b>47</b>
<b>Section 9.04 Reliance by the Agent .....</b>	<b>48</b>
<b>Section 9.05 Indemnification .....</b>	<b>48</b>
<b>Section 9.06 Delegation of Duties.....</b>	<b>48</b>
<b>Section 9.07 Resignation or Removal of the Agent .....</b>	<b>48</b>
<b>Section 9.08 Non-Reliance on the Agent and Other Lenders.....</b>	<b>49</b>
<b>Section 9.09 No Other Duties, etc .....</b>	<b>50</b>
<b>Section 9.10 Lender ERISA Matters .....</b>	<b>50</b>
ARTICLE 10 - MISCELLANEOUS .....	51
Section 10.01. Consents, Amendments, Waivers, Etc .....	51
Section 10.02. Notices .....	52
Section 10.03. Expenses .....	52
Section 10.04. Indemnification .....	53
Section 10.05. Survival of Covenants.....	54
Section 10.06. Assignment and Participations .....	54
Section 10.07. Confidentiality .....	58
Section 10.08. Governing Law; Jurisdiction.....	59
Section 10.09. Headings .....	59
Section 10.10. Counterparts .....	59
Section 10.11. Entire Agreement .....	60
Section 10.12. Severability .....	60
Section 10.13. Third Party Beneficiaries .....	60
Section 10.14. USA Patriot Act Notice .....	60

# TABLE OF CONTENTS

(continued)

4

Page

Section 10.15. No Fiduciary Duties .....	60
Section 10.16. Electronic Records.....	60
Section 10.17. WAIVER OF JURY TRIAL.....	60
Section 10.18. Acknowledgement and Consent to Bail-In of EEA Financial Institutions .....	61



**List of Schedules and Exhibits to the  
Revolving Credit Agreement**

**Schedules:**

<u>Schedule I</u>	Applicable Lending Offices and Notice Addresses
<u>Schedule 4.03</u>	Excepted Liens
<u>Schedule 4.04</u>	Supplemental Disclosures
<u>Schedule 4.06</u>	Litigation

**Exhibits:**

<u>Exhibit A</u>	Form of Borrowing Notice
<u>Exhibit B</u>	Form of Note
<u>Exhibit C</u>	Form of Interest Rate Notice
<u>Exhibit D</u>	Form of Borrower's Certificate
<u>Exhibit E</u>	Assignment and Assumption Agreement
<u>Exhibit F</u>	Form of Opinion of Borrower's Counsel
<u>Exhibit G-1</u>	U.S. Tax Compliance Certificate (For Foreign Lenders That Are <u>Not</u> Partnerships for U.S. Federal Income Tax Purposes)
<u>Exhibit G-2</u>	U.S. Tax Compliance Certificate (For Foreign Participants That Are <u>Not</u> Partnerships for U.S. Federal Income Tax Purposes)
<u>Exhibit G-3</u>	U.S. Tax Compliance Certificate (For Foreign Participants That <u>Are</u> Partnerships for U.S. Federal Income Tax Purposes)
<u>Exhibit G-4</u>	U.S. Tax Compliance Certificate (For Foreign Lenders That <u>Are</u> Partnerships for U.S. Federal Income Tax Purposes)

1 **TERM LOAN AGREEMENT**

2  
3  
4 This **TERM LOAN AGREEMENT**, dated as of September 30, 2019, is by and among  
5 **GULF POWER COMPANY**, a Florida corporation (the "BoITower"), that are parties hereto as  
6 Lenders (as defined below which as of the date of this Agreement, consist of those Lenders  
7 listed on *Schedule I*, and (the "Agent") (the BoITower, the Lenders  
8 and the Agent are hereinafter sometimes referred to collectively as the "Parties" and individually  
9 as a "Party").  
10

11 **WITNESSETH:**  
12  
13

14 **WHEREAS**, the BoITower has requested that the Lenders agree to make available to the  
15 BoITower a Three Hundred Million United States Dollars (US\$300,000,000) term loan credit  
16 facility; and  
17

18 **WHEREAS**, the Lenders are willing to do so, on the terms and conditions hereof.  
19

20 **NOW, THEREFORE**, in consideration of the foregoing premises and the mutual  
21 covenants and agreements set forth herein, the receipt and sufficiency of which are hereby  
22 acknowledged, the Parties hereby agree as follows:  
23

24 **ARTICLE 1 - DEFINITIONS AND RULES OF INTERPRETATION.**  
25

26 Section 1.01. Definitions. The following terms have the respective meanings set forth in  
27 this *Section 1.01* or elsewhere in the provisions of this Agreement referred to below:  
28

29 "Acceleration Notice" has the meaning specified in *Section 7.02*.  
30

31 [REDACTED]  
32 [REDACTED]

33 36 "Agreement" means this Term Loan Agreement, including the Schedules and Exhibits  
34 hereto.  
35

36 "Anti-Terrorism Law" means any Requirement of Law related to money laundering or  
37 financing terrorism or anticollusion laws including the Uniting and Strengthening America by  
38 Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III  
39 of Pub. L. 107-56) (the "USA PATRIOT Act"), The Currency and Foreign Transactions  
40 Reporting Act (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959) (also  
41 known as the "Bank Secrecy Act"), the Trading With the Enemy Act (50 U.S.C. § 1 et seq.) and  
42 Executive Order 13224 (effective September 24, 2001 and the Foreign Corrupt Practices Act (15  
43 U.S.C. §§ 78dd-1 et seq.).  
44

45 "Applicable Lending Office" means, in the case of any Lender, such Lender's Domestic  
46 Lending Office or Eurodollar Lending Office, as the case may be.  
47  
48

1        "Assignment and Assumption Agreement" has the meaning specified in  
2        *Section 10.06(b)*.  
3

4        "Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the  
5        applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.  
6

7        "Bail-In Legislation" means, with respect to any EEA Member Country implementing  
8        Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the  
9        European Union, the implementing law for such EEA Member Country from time to time which  
10       is described in the EU Bail-In Legislation Schedule.  
11



12  
13        "Base Rate Loan" means all or any portion of any Loan bearing interest calculated by  
14        reference to the Base Rate.  
15

16        "Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

17        "BoITower" has the meaning given such term in the Preamble.

18        "BoITowing" means the drawing down by the BoITower of a Loan or Loans from the  
19        Lenders on any given BoITowing Date.  
20

21        "BoITowing Date" means the date on which any Loan is made or is to be made.  
22

23        "Business Day" means any day other than (a) Saturday or Sunday, or (b) a day on which  
24        banking institutions in New York City, New York are required or authorized to close (provided  
25        that no day shall be deemed to be a Business Day with respect to any Eurodollar Rate Loan  
26        unless such day is also a Eurodollar Business Day).  
27

28        "BoITowing Notice" means a certificate to be provided pursuant to *Section 2.02(a)*, in  
29        substantially the form set forth in Exhibit A.  
30

31        "Change in Law" means the occurrence, after the Effective Date, of any of the following:  
32        (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law,  
33        rule, regulation or treaty or in the administration, interpretation, implementation or application  
34        thereof by any Governmental Authority or (c) the making or issuance of any request, rule,  
35        guideline or directive (whether or not having the force of law) by any Governmental Authority;  
36        provided that notwithstanding anything herein to the contrary, for the purposes of the increased

1 cost provisions in *Section 3.05*, *Section 3.06* or *Section 3.07*, any changes with respect to capital  
2 adequacy or liquidity which result from (i) all requests, rules, guidelines or directives under or  
3 issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the  
4 "Dodd-Frank Act") and (ii) all requests, rules, guidelines or directives promulgated by the Bank  
5 for International Settlements, the Basel Committee on Banking Supervision (or any successor or  
6 similar authority) or the United States of America or foreign regulatory authorities, in each case  
7 pursuant to "Basel III" (meaning the comprehensive set of reform measures developed (and  
8 designated as "Basel III" in September 2010) by the Basel Committee on Banking Supervision,  
9 to strengthen the regulation, supervision and risk management of the banking sector), shall in  
10 each case be deemed to be a "Change in Law" as to which a Lender is entitled to compensation  
11 to the extent such request, rule, guideline or directive is either (1) enacted, adopted or issued  
12 after the Effective Date (but regardless of the date the applicable provision of the Dodd-Frank  
13 Act or Basel III to which such request, rule, guideline or directive relates was enacted, adopted  
14 or issued) or (2) enacted, adopted or issued prior to the Effective Date but either (A) does not  
15 require compliance therewith, or (B) which is not fully implemented until after the Effective  
16 Date and which entails increased cost related thereto that cannot be reasonably determined as of  
17 the Effective Date.  
18

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]  
29 [REDACTED]  
30 [REDACTED]  
31 [REDACTED]

32 [REDACTED]

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Conversion" or "Conversion" means a conversion of all or part of any Loan of one Type into a Loan of another Type pursuant to *Section 2.06* hereof (including any such conversion made as a result of the operation of any other provision hereof).

"date of this Agreement" and "date hereof" means September 30, 2019.

"Default" means an Event of Default, or an event that with notice or lapse of time or both would become an Event of Default, or the filing in any court of competent jurisdiction of any petition or application or the commencement of any case or other proceeding referred to in *Section 7.01(g)* so long as the same remains undismissed or unstayed.

"Defaulting Lender" means, subject to *Section 3.10(b)*, any Lender that (a) fails to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent, or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when such payment is due; (b) notifies the Borrower or the Agent in writing that it does not intend to comply with its funding obligations under this Agreement, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied); (c) fails, within three (3) Business Days after written request by the Agent or the Borrower, to confirm in writing to the Agent and to the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the subsequent receipt of such written confirmation by the Agent and the Borrower); or (d) has (or has a direct or indirect parent company that has) become the subject of any Insolvency Proceeding or Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the



1 enforcement of judgments or writs of attachment on its assets or pennit such Lender (or such  
2 Governmental Authority) to reject, repudiate, disavow or disaffom any contrncts or agreements  
3 made with such Lender. Any deteImination by the Agent that a Lender is a Defaulting Lender  
4 under any one or more of the preceding clauses (a) through (d) shall be conclusive and binding  
5 absent manifest enor, and such Lender shall be deemed to be a Defaulting Lender (subject to  
6 *Section 3.JO(b)*) upon the Agent's delively of Notice of such deteImination to the Bonower and  
7 each Lender.  
8

9 "Dollars" or "\$" means United States dollars.  
10

11 "Domestic Lending Office" means, initially, the office of each Lender designated as such  
12 in *Schedule I* hereto; thereafter, such other office of such Lender, if any, located within the  
13 United States that will be making or maintaining any Base Rate Loan.  
14

15 "EEA Financial Institution" means (a) any credit institution or investment firm  
16 established in any EEA Member Countiy which is subject to the supervision of an EEA  
17 Resolution Authority, (b) any entity established in an EEA Member Countiy which is a parent of  
18 an institution described in clause (a) of this definition, or (c) any financial institution established  
19 in an EEA Member Countiy which is a subsidiaiy of an institution described in clauses (a) or (b)  
20 of this definition and is subject to consolidated supervision with its paient.  
21

22 "EEA Member Countiy" means any of the member states of the European Union,  
23 Iceland, Liechtenstein and No lway.  
24

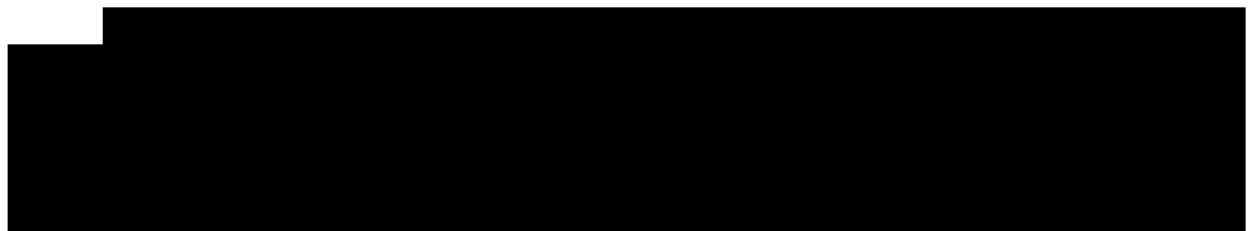
25 "EEA Resolution Authority" means any public adminisl'lative authority or any Person  
26 entillsted with public administiative authority of any EEA Member Countiy (including any  
27 delegatee) having responsibility for the resolution of any EEA Financial Institution.  
28

29 "Effective Date" means the date on which all of the conditions precedent set forth in  
30 *Section 6.01* have been satisfied or waived, which is September 30, 2019.  
31

32 "Eligible Assignee" means (i) any Lender, (ii) an affiliate of any Lender and (iii) any  
33 other Person that is approved by the Agent and, unless an Event of Default has occuned and is  
34 continuing at the time any such assignment is effected in accordance with the provisions of  
35 *Section J 0.06(b)*, the Bonower, such approval not to be unreasonably withheld or delayed;  
36 provided however, that neither the Bonower nor any affiliate of the Bonower, nor any  
37 Defaulting Lender, shall qualify as an Eligible Assignee.  
38

39 "Employee Benefit Plan" means any employee benefit plan within the meaning of  
40 Section 3(3) of ERISA maintained or cont'l'ibuted to by the Bonower or any ERISA Affiliate,  
41 other than a Multiemployer Plan.  
42

43





3

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

6

"ERISA Affiliate" means any Person that is treated as a single employer with the Bonower under Section 414 of the Code.

9

"ERISA Reportable Event" means a reportable event with respect to a Guaranteed Pension Plan within the meaning of Section 4043 of ERISA as to which the requirement of notice has not been waived.

13

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

16

"Eurocunency Reserve Rate" means, for any Interest Period for any Eurodollar Rate Loan, the average maximum rate at which reserves (including, without limitation, any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the Federal Reserve System in New York City with deposits against "EurocmTency liabilities" (as such term is used in Regulation D) in effect two (2) Eurodollar Business Days before the first day of such Interest Period. Without limiting the effect of the foregoing, the EurocmTency Reserve Rate shall include any other reserves required to be maintained by such member banks by reason of any Regulatory Change with respect to (i) any category of liabilities that includes deposits by reference to which the Eurodollar Rate is to be detennined as provided in the definition of "Eurodollar Rate" in this *Section 1.01* or (ii) any category of extensions of credit or other assets that includes Eurodollar Rate Loans.

28

"Eurodollar Business Day" means any Business Day on which commercial banks are open for international business (including dealings in Dollar deposits) in London.

31

"Eurodollar Lending Office" means, initially, the office of each Lender designated as such in Schedule I hereto; thereafter, such other office of such Lender, if any, that shall be making or maintaining any Eurodollar Rate Loan.

35

"Eurodollar Rate" means, for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters LIBOROI Page (or any successor page, the "LIBO Screen Rate") as the London interbank offered rate for deposits in Dollars ("LIBOR") at approximately 11:00 a.m., London

39

time, two (2) Eurodollar Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period, divided by one (1) minus the Eurocurrency Reserve Rate for such Loan for such Interest Period; *provided* that if the Eurodollar Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Eurodollar Rate Loan” means all or any portion of any Loan bearing interest calculated by reference to the Eurodollar Rate.

“Event of Default” has the meaning specified in Article 7.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in such Loan (other than pursuant to an assignment request by the Borrower under *Section 2.08*), or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to *Section 3.09*, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with *Section 3.09(e)*, and (d) any U.S. federal withholding Taxes imposed under FATCA.

“FASB ASC 715” means Financial Accounting Standards Board Accounting Standards Codification 715, Compensation – Retirement Benefits.

“FASB ASC 810” means Financial Accounting Standards Board Accounting Standards Codification 810, Consolidation.

“FATCA” means Sections 1471 through 1474 of the Code, as of the Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or official practices adopted pursuant to any published intergovernmental agreement entered into in connection with the implementation of such sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such published intergovernmental agreements.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upwards, if necessary to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such

1 day, provided that (a) if the day for which such rate is to be detennined is not a Business Day,  
2 the Federal Funds Rate for such day shall be such rate on such trnnsactions on the next preceding  
3 Business Day as so published on the next succeeding Business Day and (b) if such rate is not so  
4 published for any Business Day, the Federal Funds Rate for such Business Day shall be the  
5 average rate charged to the Agent on such Business Day on such trnnsactions as determined by  
6 the Agent; *provided* that if the Federal Funds Rate shall be less than zero, such rate shall be  
7 deemed to be zero for pmposes of this Agreement.  
8

9 "Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

10 "Fitch" means Fitch Ratings.

11 "Foreign Lender" means a Lender that is not a U.S. Person.  
12

13 "FPSC Financing Order" means the Final Order Granting Modification of Gulf Power's  
14 Authority to Issue and Sell Secmities and to Receive Common Equity Contiibutions issued by  
15 the Florida Public Service Commission on Febmaiy 25, 2019, as Order No. PSC-2019-0070-  
16 FOF-EI, as modified by Amendatoly Order issued by the Florida Public Service Commission on  
17 May 31, 2019 as Order No. PSC-2019-0070A-FOF-EI, and each successive order of the Florida  
18 Public Service Commission granting authority to the BoITower to issue and sell secmities, as  
19 applicable.  
20

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1       **II**       [REDACTED]

2       **II**       [REDACTED]

3       **II**       [REDACTED]

4       [REDACTED]

4       **II**       [REDACTED]

5       **II**       [REDACTED]

6       **II**       [REDACTED]  
7  
8  
9  
10  
11

12       "generally accepted accounting principles" means generally accepted accounting  
13 principles, as recognized by the American Institute of Certified Public Accountants and the  
14 Financial Accounting Standards Board, consistently applied and maintained on a consistent basis  
15 for the BoITower and its Subsidiaries throughout the period indicated and (subject to *Section*  
16 *1.03*) consistent with the prior financial practice of the BoITower and its Subsidiaries.

17  
18       "Governmental Authority" means, as to any Person, any government (or any political  
19 subdivision or jurisdiction thereof), comi, bureau, agency or other governmental authority having  
20 jurisdiction over such Person or any of its business, operations or propertie s.

21  
22       "Guaranteed Pension Plan" means any employee pension benefit plan within the meaning  
23 of Section 3(2) of ERIS.A that is subject to Title IV of ERIS.A and that is maintained or  
24 contributed to by the BoITower or any ERIS.A Affiliate or in respect of which the BoITower or  
25 any ERIS.A Affiliate could be reasonably expected to have liability, other than a Multiemployer  
26 Plan.



1       “Immediately Available Funds” means funds with good value on the day and in the city  
2 in which payment is received.  
3

4       “Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with  
5 respect to any payment made by or on account of any obligation of the Borrower under any Loan  
6 Document and (b) to the extent not otherwise described in the preceding clause (a), Other Taxes.  
7

8       “Indemnatee” has the meaning specified in *Section 10.04*.  
9

10       “Indemnity Claim” has the meaning specified in *Section 10.04*.  
11

12       “Insolvency Proceeding” means, with respect to any Person, (a) any case, action or  
13 proceeding with respect to such Person before any competent court or other Governmental  
14 Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership,  
15 dissolution, administrative receivership, administration, winding-up or relief of debtors, or (b)  
16 any general assignment for the benefit of creditors, composition, marshalling of assets for  
17 creditors, or other, similar arrangement in respect of its creditors generally or any substantial  
18 portion of its creditors, undertaken under any U.S. Federal or state or any foreign law.  
19

20       “Interest Payment Date” means (a) as to any Base Rate Loan, the last day of each  
21 calendar quarter; (b) as to any Eurodollar Rate Loan in respect of which the Interest Period is (i)  
22 three (3) months or less, the last day of such Interest Period and (ii) more than three (3) months,  
23 the date that is three (3) months from the first day of such Interest Period and, in addition, the  
24 last day of such Interest Period; and (c) as to all Loans, the Maturity Date.  
25

26       “Interest Period” means, with respect to any particular Eurodollar Rate Loan, the period  
27 which (i) initially commences on either (A) the Borrowing or (B) the date of Conversion of all or  
28 any portion of any particular Base Rate Loan into a Eurodollar Rate Loan, as the case may be,  
29 and ends one (1), two (2), three (3) or six (6) months thereafter as selected by the Borrower; and  
30 (ii) thereafter, each period commencing on the last day of the next preceding Interest Period and  
31 ending on the last day of one of the periods set forth above, as selected by the Borrower in an  
32 Interest Rate Notice; *provided*, that all of the foregoing provisions relating to Interest Periods are  
33 subject to the following:  
34

- 35       (a) if any Interest Period would otherwise end on a day that is not a Eurodollar  
36 Business Day, then such Interest Period shall end on the next succeeding  
37 Eurodollar Business Day unless the next succeeding Eurodollar Business Day  
38 falls in another calendar month, in which case such Interest Period shall end on  
39 the immediately preceding Eurodollar Business Day;  
40
- 41       (b) if the Borrower shall fail to give Notice as provided in *Section 2.06*, the Borrower  
42 shall be deemed to have requested a new Eurodollar Rate Loan with an Interest  
43 Period of equal duration as the immediately preceding Interest Period;  
44
- 45       (c) if any Interest Period begins on the last Eurodollar Business Day of a calendar  
46 month (or on a day for which there is no numerically corresponding day in the  
47 calendar month at the end of the Interest Period), then the Interest Period shall end

on the last Eurodollar Business Day of the calendar month at the end of such Interest Period; and

(d) no Interest Period shall extend beyond the Maturity Date.

"Interest Rate Notice" means a Notice given by the BoITower to the Agent (in substantially the form set forth in *Exhibit C*) specifying the BoITower's election to Convert all or any portion of the Loans, or specifying the Interest Period with respect to all or any portion of any Eurodollar Rate Loans, or to continue the Loans for an additional Interest Period in accordance with *Section 2.06*.

"Lenders" means each of the lending institutions listed on *Schedule I* hereto so long as such Lender has an Outstanding Loan hereunder and any other Person who becomes an assignee of any rights and obligations of a Lender pursuant to *Section 10.06*.

"Liabilities" has the meaning specified in *Section 10.04*.

"LIBOR" has the meaning specified in the definition of Eurodollar Rate.

"LIBO Screen Rate" has the meaning specified in the definition of Eurodollar Rate.

"Lien" means any mortgage, pledge, lien, security interest or other charge or encumbrance with respect to any present or future assets of the Person referred to in the context in which the term is used.

"Loan" means the aggregate principal amount advanced by each Lender as a Loan or Loans to the BoITower under *Section 2.01*.

"Loan Documents" means this Agreement, any Note or certificate or other document executed and delivered by the BoITower in connection herewith.

"Loans" means, as applicable, a portion of the Loan that either (a) bears interest by reference to the Base Rate or (b) bears interest by reference to the Eurodollar Rate and has a single Interest Period, which in the case of the preceding clauses (a) and (b), together, constitute the aggregate principal amount of the Loans of all Lenders Outstanding at the time referred to in the context in which the term is used.

"Majority Lenders" means Lenders having more than fifty percent (50%) of the aggregate amount of the commitments, or, if the commitments shall have terminated, Lenders holding more than fifty percent (50%) of the aggregate unpaid principal amount of the Loans; provided that the commitment of any Defaulting Lender shall be excluded for the purposes of making a determination of Majority Lenders.

[REDACTED]

[REDACTED]

"Master Agreement" has the meaning specified in the definition of "Swap Contract".

"Maturity Date" means September 30, 2021.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means any multiemployer plan within the meaning of Section 3(37) of ERISA to which the BoITower or any ERISA Affiliate contributes or has an obligation to contribute or has within any of the preceding five plan years contributed or had an obligation to contribute.

"NextEra Energy" means NextEra Energy, Inc., a Florida corporation.

"Non-Defaulting Lenders" means, at any particular time, each Lender that is not a Defaulting Lender at such time.

"Nomenclature Indebtedness" has the meaning specified in Section 5.18(a).

"Note" means a promissory note provided for by Section 2.03(b), including (as applicable) all amendments thereto and restatements thereof and all promissory notes delivered in substitution or exchange therefor (including any amended and restated note issued pursuant to this Agreement).

"Notice" has the meaning specified in Section 10.02.

"One Month LIBOR" means the ICE Benchmark Administration Settlement Rate applicable to Dollars for a period of one (1) month (for the avoidance of doubt, One Month LIBOR for any day shall be based on the rate appearing on Reuters LIBOR01 Page (or other commercially available source providing such quotations as designated by the Agent from time to time) at approximately 11:00 a.m. London time two (2) Eurodollar Business Days prior to such day); *provided* that if One Month LIBOR shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, comi or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are

1 Other Connection Taxes imposed with respect to an assignment (other than an assignment made  
2 pursuant to Sections 2.08, 3.03 or 3.04).

3  
4 “Outstanding” means, with respect to any Loan, the aggregate unpaid principal amount  
5 thereof as of any date of determination.

6  
7 “Participant” has the meaning specified in *Section 10.06(d)*.

8  
9 “Participant Register” has the meaning specified in *Section 10.06(d)*.

10  
11 “Parties” and “Party” have the meanings specified in the Preamble.

12  
13 “PBGC” means the Pension Benefit Guaranty Corporation created by Section 4002 of  
14 ERISA and any successor entity or entities having similar responsibilities.

15  
16 “Person” means any individual, corporation, partnership, trust, unincorporated  
17 association, business, or other legal entity, and any government or any governmental agency or  
18 political subdivision thereof.

19  
20 “Prime Rate” means, for any day, a rate per annum equal to the prime rate of interest  
21 announced from time to time by the Agent as its prime lending rate for such day, changing when  
22 and as changes to said prime rate are announced.

23  
24 “Pro Rata Share” means, in respect of any Lender as of the date of any determination, the  
25 proportion which such Lender’s Loans Outstanding bear to the total amount of Loans  
26 Outstanding.

27  
28 “Rating Agency” means any of Fitch, Moody’s or Standard & Poor’s.

29  
30 “Recipient” means the Agent and any Lender.

31  
32 “Register” has the meaning specified in *Section 10.06(c)*.

33  
34 “Regulations A, D, U and X” means, respectively, Regulations A, D, U and X of the  
35 Federal Reserve Board (or any successor).

36  
37 “Regulatory Change” means, with respect to any Lender, any change after the date of this  
38 Agreement in Federal, state or foreign law or regulations (including, without limitation,  
39 Regulation D) or the adoption, making or change in after such date of any interpretation,  
40 directive or request applying to a class of banks including such Lender of or under any Federal,  
41 state or foreign law or regulations (whether or not having the force of law and whether or not the  
42 failure to comply therewith would be unlawful) by any court or governmental or monetary  
43 authority charged with the interpretation or administration thereof.

44  
45 “Related Parties” means, with respect to any Person, such Person’s affiliates and the  
46 partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and  
47 representatives of such Person and of such Person’s affiliates.

1 "Requirement of Law" means, as to any Person, the certificate of incorporation and by-  
2 laws or other organizational or governing documents of such Person, and any law (including  
3 common law), statute, ordinance, treaty, rule, regulation, order, decree, judgment, writ,  
4 injunction, settlement agreement, requirement or determination of an arbitrator or a court or  
5 other Governmental Authority, in each case applicable to or binding upon such Person or any of  
6 its property or to which such Person or any of its property is subject.

7  
8 "Sanctions" means, sanctions administered or enforced by the US Department of the  
9 Treasury's Office of Foreign Assets Control (OFAC), US Department of State, United Nations  
10 Security Council, European Union, Her Majesty's Treasury, or other relevant sanctions  
11 authority.

12  
13 "Standard & Poor's" means S&P Global Ratings.

14  
15 "Subsidiary" means any corporation, association, trust, or other business entity of which  
16 the Boil Tower (or where the context requires, NextEra Energy) shall at any time own directly or  
17 indirectly through a Subsidiary or Subsidiaries at least a majority (by number of votes) of the  
18 outstanding Voting Stock.

19  
20 "Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit  
21 derivative transactions, forward rate transactions, commodity swaps, commodity options,  
22 forward commodity contracts, equity or equity index swaps or options, bond or bond price or  
23 bond index swaps or options or forward bond or forward bond price or forward bond index  
24 transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor  
25 transactions, collar transactions, currency swap transactions, cross-currency rate swap  
26 transactions, currency options, spot contracts, or any other similar transactions or any  
27 combination of any of the foregoing (including any options to enter into any of the foregoing),  
28 whether or not any such transaction is governed by or subject to any master agreement, and (b)  
29 any and all transactions of any kind, and the related confirmations, which are subject to the terms  
30 and conditions of, or governed by, any form of master agreement published by the International  
31 Swaps and Derivatives Association, Inc. or any International Foreign Exchange Master  
32 Agreement (any such master agreement, together with any related schedules, a "Master  
33 Agreement"), including any such obligations or liabilities under any Master Agreement.

34  
35 [REDACTED]

36 [REDACTED]

37 [REDACTED]



1  
2  
3  
4 "Taxes" means all present or future taxes, levies, imposts, duties, deductions,  
5 withholdings (including backup withholdings), assessments, fees or other charges imposed by  
6 any Governmental Authority, including any interest, additions to tax or penalties applicable  
7 thereto.  
8

9  
10 " f' has the meaning specified in *Section 1.02(h)*.

11 "U.S. Person" means any Person that is a "United States Person" as defined in Section  
12 7701(a)(30) of the Code.

13  
14 "U.S. Tax Compliance Certificate" has the meaning specified in paragraph (ii) of *Section*  
15 *3.09(e)* .  
16

17 "Voting Stock" means stock or similar interest, of any class or classes (however  
18 designated), the holders of which are at the time entitled, as such holders, to vote for the election  
19 of a majority of the directors (or persons performing similar functions) of the corporation,  
20 association, trust or other business entity involved, whether or not the right so to vote exists by  
21 reason of the happening of a contingency.  
22

23 "Withholding Agent" means the Bonower or the Agent.  
24

25 "Write-Down and Conversion Powers" means, with respect to any EEA Resolution  
26 Authority, the write-down and conversion powers of such EEA Resolution Authority from time  
27 to time under the Bail-In Legislation for the applicable EEA Member Country, which write-  
28 down and conversion powers are described in the EU Bail-In Legislation Schedule.  
29

30 Section 1.02. Rules of Interpretation.

31  
32 (a) A reference to any document or agreement shall include such document or  
33 agreement, including any schedules or exhibits thereto, as any of same may be amended,  
34 modified or supplemented from time to time in accordance with its terms and, if applicable, the  
35 terms of this Agreement.  
36

37 (b) The singular includes the plural and the plural includes the singular.

1                   4   (c)    A reference to any law includes any amendment or modification to such  
2 law.

5  
6                   9   (d)    A reference to any Person includes its permitted successors and permitted  
7 assigns.

10  
11                   (e)    The words “include,” “includes” and “including” are not limiting.

12  
13                   (f)    Reference to any particular “Article,” “Section,” “Schedule,” “Exhibit,”  
14 “Recital” or “Preamble” refers to the corresponding Article, Section, Schedule, Exhibit, Recital  
15 or Preamble of this Agreement unless otherwise indicated.

16  
17                   (g)    The words “herein,” “hereof,” “hereunder,” “hereto” and words of like  
18 import shall refer to this Agreement as a whole and not to any particular section or subdivision of  
19 this Agreement.

20  
21                   (h)    Loans hereunder are distinguished by “Type”. The Type of a Loan refers  
22 to whether such Loan is a Base Rate Loan or a Eurodollar Rate Loan, each of which constitutes a  
23 Type.

24  
25                   Section 1.03. Accounting Matters. Except as otherwise expressly provided herein, all  
26 terms of an accounting or financial nature shall be construed in accordance with generally  
27 accepted accounting principles, as in effect from time to time; provided that, if the Borrower  
28 notifies the Agent that the Borrower requests an amendment to any provision hereof to eliminate  
29 the effect of any change occurring after the Effective Date in generally accepted accounting  
30 principles or in the application thereof on the operation of such provision (or if the Agent notifies  
31 the Borrower that the Majority Lenders request an amendment to any provision hereof for such  
32 purpose), regardless of whether any such notice is given before or after such change in generally  
33 accepted accounting principles or in the application thereof, then (a) such provision shall be  
34 interpreted on the basis of generally accepted accounting principles as in effect and applied  
35 immediately before such change shall have become effective until such notice shall have been  
36 withdrawn or such provision amended in accordance therewith and (b) the Borrower shall  
37 provide to the Agent financial statements and other documents required under this Agreement or  
38 as reasonably requested hereunder setting forth a reconciliation between calculations made  
39 before and after giving effect to such change in generally accepted accounting principles.

## 40 41                   **ARTICLE 2 - LOANS.**

42  
43                   Section 2.01. Term Loan. Each of the Lenders severally agrees, on the terms of this  
44 Agreement (including, without limitation, *Article 6*), to make, simultaneously with the other  
45 Lenders, a single loan in Dollars to the Borrower on September 30, 2019 in an amount not to  
46 exceed the amount set opposite the name of such Lender on *Schedule I*, *provided that the*  
47 *aggregate principal amount of such Loans shall not exceed Three Hundred Million United States*  
48 *Dollars (US\$300,000,000). Amounts borrowed and repaid or prepaid may not be reborrowed.*

49  
50                   Section 2.02. Notice and Manner of Borrowing; Optional Prepayment.

1 (a) The Borrower shall give a Borrowing Notice in substantially the form of *Exhibit*  
2 *A* (or telephonic notice, promptly confirmed in writing) to the Agent prior to 11:00 a.m., New  
3 York, New York time (i) on the proposed Borrowing Date in the case of a Base Rate Loan and  
4 (ii) at least two (2) Eurodollar Business Days prior to the proposed Borrowing Date in the case of  
5 a Eurodollar Rate Loan, specifying (A) the Borrowing Date (which shall be a Business Day), (B)  
6 whether the requested Borrowing is of a Base Rate Loan or a Eurodollar Rate Loan, or any  
7 combination thereof as permitted under the terms of this *Section 2.02*, and the amount of each  
8 and (C) in the case of each Eurodollar Rate Loan, the initial Interest Period applicable thereto.

9  
10 (b) The Agent shall give written or telephonic notice (confirmed in writing) to each  
11 of the Lenders promptly upon receipt of the Borrowing Notice.

12  
13 (c) Each of the Lenders shall, not later than noon, New York, New York time, on the  
14 Borrowing Date, make immediately available funds in Dollars in the amount of such Lender's  
15 Loan available to the Agent at the office of the Agent, by wire transfer at its address set forth in  
16 Section 10.02(b). After the Agent's receipt of such funds and upon fulfillment of the applicable  
17 conditions set forth in Section 6.01, the Agent will make such funds available to the Borrower by  
18 crediting the Borrower's designated account in accordance with the wire instructions included in  
19 the Borrowing Notice.

20  
21 (d) Any notice delivered or given by the Borrower to the Agent as provided in this  
22 *Section 2.02* shall be irrevocable and binding upon the Borrower upon receipt by the Agent.  
23 Each Borrowing shall be in the principal amount of [REDACTED] or any integral multiple of  
24 [REDACTED] in excess thereof. In no event shall the Borrower select Interest Periods and  
25 Types of Loans which would have the result that there shall be more than six (6) different  
26 Interest Periods for Loans outstanding at the same time (for which purpose Interest Periods for  
27 Loans of different Types shall be deemed to be different Interest Periods even if the Interest  
28 Periods begin and end on the same dates).

29  
30 (e) The Borrower shall have the right, at any time and from time to time, to prepay  
31 the Loans in whole or in part, without penalty or premium, upon not less than three (3) Business  
32 Days' prior Notice (or telephonic notice promptly confirmed in writing) given to the Agent not  
33 later than 11:00 A.M. (New York City time), in the case of Eurodollar Rate Loans and same day  
34 written Notice (or telephonic notice promptly confirmed in writing) to the Agent not later than  
35 11:00 A.M. (New York City time) in the case of Base Rate Loans; *provided* that (i) each  
36 prepayment shall be in the principal amount of [REDACTED] or any integral multiple of  
37 [REDACTED] in excess thereof, or equal to the remaining principal balance outstanding under  
38 such Loan, and (ii) in the event that the Borrower shall prepay any portion of any Eurodollar  
39 Rate Loan prior to the last day of the Interest Period relating thereto, the Borrower shall  
40 indemnify each of the Lenders in respect of such prepayment in accordance with *Section 3.08*.

41  
42 (f) Unless the Agent shall have received notice from a Lender prior to the time of any  
43 Borrowing that such Lender will not make available to the Agent such Lender's ratable portion  
44 of such Borrowing, the Agent may assume that such Lender has made such portion available to  
45 the Agent on the date of such Borrowing in accordance with Section 2.02(a) and the Agent may,  
46 in reliance upon such assumption, make available to the Borrower on such date a corresponding  
47 amount. If and to the extent that such Lender shall not have so made such ratable portion

1 available to the Agent, such Lender and the Borrower severally agree to repay to the Agent  
2 forthwith on demand such corresponding amount together with interest thereon, for each day  
3 from the date such amount is made available to the Borrower until the date such amount is repaid  
4 to the Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to  
5 Borrowings of such Type and (ii) in the case of such Lender, the Federal Funds Rate. If such  
6 Lender shall repay to the Agent such corresponding amount, such amount so repaid shall  
7 constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.  
8

9 (g) The failure of any Lender to make any Loan to be made by it on the date specified  
10 therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but  
11 neither any Lender nor the Agent shall be responsible for the failure of any other Lender to make  
12 a Loan to be made by such other Lender.  
13

14 Section 2.03. Evidence of Indebtedness.  
15

16 (a) The Loans made by each Lender shall be evidenced by one or more  
17 accounts or records maintained by such Lender and by the Agent in the ordinary course of  
18 business. The accounts or records maintained by the Agent and each Lender shall be conclusive  
19 absent manifest error. Any failure to so record or any error in doing so shall not, however, limit  
20 or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with  
21 respect to its obligations hereunder. In the event of any conflict between the accounts and  
22 records maintained by any Lender and the accounts and records of the Agent in respect of such  
23 matters, the accounts and records of the Agent shall control in the absence of manifest error.  
24

25 (b) If specifically requested by any particular Lender in writing furnished to  
26 the Borrower, the Borrower's obligation to pay the principal of, and interest on, the Loans made  
27 by such Lender shall be evidenced by a promissory note duly executed and delivered by the  
28 Borrower, such Note to be substantially in the form of Exhibit B with blanks appropriately  
29 completed in conformity herewith (each, a "Note" and, collectively, the "Notes").  
30

31 (c) The Note issued to any Lender shall (i) be payable to the order of such Lender,  
32 (ii) be dated as of the Effective Date, (iii) be in a stated maximum principal amount equal to the  
33 commitment of such Lender, (iv) mature on the Maturity Date, (v) bear interest as provided in  
34 this Agreement, and (vi) be entitled to the benefits of this Agreement and the other Loan  
35 Documents.  
36

37 (d) Each Lender will advise the Borrower of the outstanding indebtedness  
38 hereunder to such Lender upon written request therefor.  
39

40 Section 2.04. Mandatory Payment. The Loans will mature on the Maturity Date and the  
41 Borrower unconditionally promises to pay to the Agent for account of each Lender the entire  
42 unpaid principal amount of such Lender's Loans Outstanding on the Maturity Date plus all  
43 accrued and unpaid interest thereon and all other amounts then due hereunder.

1           Section 2.05. Interest.  
2

3           (a)     Each of the Loans shall bear interest at the following rates:  
4

5                   (i)     To the extent that all or any portion of any Loan is a Eurodollar  
6           Rate Loan, such Loan or such portion shall bear interest during each applicable Interest  
7           Period at a rate per annum equal [REDACTED]  
8           [REDACTED]

9                   (ii)    To the extent that all or any portion of any Loan is a Base Rate  
10          Loan, such Loan or such portion shall bear interest at a rate per annum equal [REDACTED]  
11          [REDACTED]

12          (b)     The Borrower promises to pay interest on each Loan or any portion  
13          thereof Outstanding in arrears on (i) each Interest Payment Date applicable to such Loan and (ii)  
14          upon the payment or prepayment thereof or the Conversion thereof to a Loan of another Type  
15          (but only on the principal amount so paid, prepaid or Converted).  
16

17          (c)     After each Loan is made, the Borrower will have the interest rate options  
18          described in *Section 2.06* with respect to all or any part of such Loan.  
19

20          (d)     The Agent shall give prompt Notice to the Borrower of the applicable  
21          interest rate determined by the Agent for purposes of clauses (i) or (ii) of *Section 2.05(a)*.  
22

23          (e)     Overdue principal, and to the extent permitted by applicable law, overdue  
24          interest on the Loans and all other overdue amounts payable hereunder or under any Note shall  
25          bear interest payable on demand, in the case of (i) overdue principal of or overdue interest on  
26          each Loan, at a rate per annum equal to two percent (2%) above the rate then applicable to such  
27          Loan and (ii) any other overdue amounts, at a rate per annum equal to two percent (2%) above  
28          the Base Rate, in each case until such amount shall be paid in full (after, as well as before,  
29          judgment)  
30

31           Section 2.06. Interest Rate Conversion or Continuation Options.  
32

33          (a)     The Borrower may, subject to *Section 2.07*, *Section 3.03* and *Section 3.04*,  
34          elect from time to time to Convert all or any portion of any Loan to a Loan of another Type,  
35          *provided* that (i) with respect to any such Conversion of all or any portion of any Eurodollar Rate  
36          Loan to a Base Rate Loan, the Borrower shall give the Agent an Interest Rate Notice (or  
37          telephonic notice promptly confirmed in writing) at least one (1) Business Day prior to such  
38          Conversion; (ii) in the event of any Conversion of all or any portion of a Eurodollar Rate Loan  
39          into a Base Rate Loan prior to the last day of the Interest Period relating to that Eurodollar Rate  
40          Loan, the Borrower shall indemnify each Lender in respect of such Conversion in accordance  
41          with *Section 3.08*; (iii) with respect to any such Conversion of all or any portion of a Base Rate  
42          Loan to a Eurodollar Rate Loan, the Borrower shall give the Agent an Interest Rate Notice (or  
43          telephonic notice promptly confirmed in writing) at least three (3) Eurodollar Business Days  
44          prior to such election; and (iv) no Loan may be Converted into a Eurodollar Rate Loan when any  
45          Default has occurred and is continuing. On the date on which such Conversion is being made,  
46          any Lender may take such action, if any, as it deems desirable to transfer its Loan to its Domestic



1 Lending Office or its Eurodollar Lending Office, as the case may be. All or any part of Loans of  
2 any Type may be Converted as specified herein; *provided* that partial Conversions shall be in an  
3 aggregate principal amount of [REDACTED] or any integral multiple of [REDACTED] in  
4 excess thereof. The Agent shall notify the Lenders promptly of each such Interest Rate Notice  
5 made by the Borrower. Each Interest Rate Notice relating to the Conversion of all or any portion  
6 of any Base Rate Loan to a Eurodollar Rate Loan shall be irrevocable by the Borrower.  
7

8 (b) Eurodollar Rate Loans may be continued as such upon the expiration of an  
9 Interest Period with respect thereto by compliance by the Borrower with the notice provisions  
10 contained in *Section 2.06(a)*; *provided* that no Eurodollar Rate Loan may be continued as such  
11 when any Event of Default has occurred and is continuing, but shall be automatically Converted  
12 to a Base Rate Loan on the last day of the first Interest Period that ends during the continuance of  
13 any Event of Default of which the officers of the Agent active upon the Borrower's account have  
14 actual knowledge.  
15

16 (c) Any Conversion to or from Eurodollar Rate Loans shall be in such  
17 amounts and be made pursuant to such elections so that, after giving effect thereto, the aggregate  
18 principal amount of all Eurodollar Rate Loans having the same Interest Period shall not be less  
19 than [REDACTED] or any integral multiple of [REDACTED] in excess thereof.  
20

21 (d) Except to the extent otherwise expressly provided herein, (i) each  
22 Borrowing of Loans from the Lenders hereunder, each Conversion or continuation of all or a  
23 portion of any Loan of a particular Type hereunder, and each payment of fees hereunder, shall be  
24 effected pro rata among the Lenders in accordance with the amounts of their respective Pro Rata  
25 Share and (ii) each payment of interest on Loans by the Borrower shall be made for account of  
26 the Lenders pro rata in accordance with the amounts of interest on such Loans then due and  
27 payable to the respective Lenders.  
28

29 (e) Upon the expiration of any Interest Period, the Borrower shall be deemed  
30 to have requested a new Interest Period of equal duration as the immediately preceding Interest  
31 Period unless, at least three (3) Business Days prior to said expiration, the Borrower shall have  
32 delivered to the Agent an Interest Rate Notice (or telephonic notice promptly confirmed in  
33 writing) specifying a new Interest Period of a different duration.  
34

#### 35 Section 2.07. Computation of Interest and Fees. 36

37 (a) On the date on which the aggregate unpaid principal amount of Eurodollar Rate  
38 Loans comprising any Borrowing shall be reduced, by payment or prepayment or  
39 otherwise, to less than [REDACTED], such Loans shall automatically Convert  
40 into Base Rate Loans.  
41

42 (b) Upon the occurrence and during the continuance of any Event of Default (i) each  
43 Eurodollar Rate Loan will automatically, on the last day of the then existing  
44 Interest Period therefor, Convert into a Base Rate Loan and (ii) the obligation of  
45 the Lenders to make, or to Convert Loans into, Eurodollar Rate Loans shall be  
46 suspended.

1           Section 2.08. Replacement of Lenders. If (i) any Lender requests compensation under  
2 *Section 3.05* or *Section 3.06*, (ii) the Borrower is required to pay any additional amount to any  
3 Lender or any Governmental Authority for the account of any Lender pursuant to *Section 3.09*,  
4 (iii) any Lender is not able to make or maintain its Loans as a result of any event or circumstance  
5 contemplated in *Section 3.04*, (iv) any Lender is a Defaulting Lender, or (v) any Lender fails to  
6 consent to an election, consent, amendment, waiver or other modification to this Agreement or  
7 any other Loan Document that requires consent of a greater percentage of the Lenders than the  
8 Majority Lenders (a “Non-Consenting Lender”), and such election, consent, amendment, waiver  
9 or other modification is otherwise consented to by the Majority Lenders, then the Borrower may,  
10 at its sole expense and effort, upon Notice to such Lender and the Agent, require such Lender to  
11 assign and delegate, without recourse (in accordance with and subject to the restrictions  
12 contained in, and consents required by, *Section 10.06*), all of its interests, rights and obligations  
13 under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume  
14 such obligations (which Eligible Assignee may be another Lender, if such Lender accepts such  
15 assignment); *provided that*:

- 16
- 17           (a) any such assignment resulting from a claim against the Borrower for additional  
18 compensation pursuant to *Section 3.05* or *Section 3.06* or a requirement that the  
19 Borrower pay an additional amount pursuant to *Section 3.09* has the effect of  
20 reducing the amount that the Borrower otherwise would have been obligated to  
21 pay under those sections;  
22
  - 23           (b) no such assignment shall conflict with applicable law;  
24
  - 25           (c) the Borrower shall have paid to the Agent the assignment fee specified in *Section*  
26 *10.06(b)*;  
27
  - 28           (d) in the case of any assignment resulting from a Lender becoming a Non-  
29 Consenting Lender, the applicable assignee shall have consented to the applicable  
30 amendment, waiver or consent; and  
31
  - 32           (e) such Lender shall have received payment of an amount equal to one hundred  
33 percent (100%) of the Outstanding amount of its Loans, any accrued and unpaid  
34 interest thereon, any accrued and unpaid fees and other accrued and unpaid  
35 amounts payable to it hereunder and under the other Loan Documents (including  
36 any amounts under *Section 3.08*) from the assignee (to the extent of such  
37 Outstanding principal and accrued interest and fees) or the Borrower (in the case  
38 of any other accrued and unpaid amounts).  
39

### 40           **ARTICLE 3 - CERTAIN GENERAL PROVISIONS.**

#### 41           Section 3.01. Funds for Payments.

42           (a) All payments of principal, interest, fees and any other amounts due  
43  
44 hereunder or under any of the other Loan Documents shall be made to the Agent, without  
45 counterclaim or setoff except as provided in Article 8, at the offices of the Agent, at its address  
46 set forth in Schedule I hereto, for the respective accounts of the Lenders, in Immediately  
47 Available Funds, not later than 2:00 p.m., New York, New York time, on the due date therefor.  
48

1 Any payment received by the Agent after 2:00 p.m., New York, New York time, shall be deemed  
2 to have been received on the next succeeding Business Day. The Agent will promptly thereafter  
3 cause to be distributed like funds relating to the payment of principal or interest or fees ratably  
4 (other than amounts payable pursuant to *Sections 3.05, 3.06, 3.08, 3.09* and Article 10 to the  
5 Lenders for the account of their respective Applicable Lending Offices, and like funds relating to  
6 the payment of any other amount payable to any Lender to such Lender for the account of its  
7 Applicable Lending Office, in each case to be applied in accordance with the terms of this  
8 Agreement; provided that, for the purpose of calculating any Lender's Pro Rata Share of any  
9 payment hereunder, payments to each such Lender shall include any amounts set off by the  
10 Borrower against such Lender pursuant to *Section 8.02*.  
11

12 (b) Unless the Agent shall have received Notice from the Borrower prior to  
13 the date on which any payment is due to the Lenders that the Borrower will not make such  
14 payment in full, the Agent may assume that the Borrower has made such payment in full to the  
15 Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed  
16 to each Lender on such due date an amount equal to the amount then due such Lender. If and to  
17 the extent the Borrower shall not have so made such payment in full to the Agent or each Lender,  
18 as the case may be, the Borrower shall repay to the Agent forthwith on demand such amount  
19 distributed to such Lender, together with interest thereon, for each day from the date such  
20 amount is distributed to such Lender until the date such Lender, repays such amount to the  
21 Agent, at the Federal Funds Rate.  
22

23 Section 3.02. Computations. All computations of interest based on the Prime Rate shall  
24 be made by the Agent on the basis of a year of 365 or 366 days, as the case may be, and all  
25 computations of interest based on the Eurodollar Rate or the Federal Funds Rate and of fees shall  
26 be made by the Agent on the basis of a year of 360 days, in each case for the actual number of  
27 days (including the first day but excluding the last day) occurring in the period for which such  
28 interest or fees are payable. Except as otherwise provided in the definition of the term "Interest  
29 Period" with respect to any Eurodollar Rate Loan, whenever a payment hereunder or under any  
30 of the other Loan Documents becomes due on a day that is not a Business Day, the due date for  
31 such payment shall be extended to the next succeeding Business Day, and interest on any  
32 principal so extended shall accrue during such extension.  
33

34 Section 3.03. Inability to Determine Eurodollar Rate. (a) In the event, prior to the  
35 commencement of any Interest Period relating to any Eurodollar Rate Loans, the Agent shall  
36 determine or be notified by the Majority Lenders that adequate and reasonable methods do not  
37 exist for ascertaining the Eurodollar Rate that would otherwise determine the rate of interest to  
38 be applicable to any Eurodollar Rate Loan, or that the Eurodollar Rate will not adequately reflect  
39 the cost to the Majority Lenders of making, funding or maintaining their Eurodollar Rate Loans,  
40 during any Interest Period, the Agent shall forthwith give Notice of such determination (which  
41 shall be conclusive and binding on the Borrower and the Lenders) to the Borrower and the  
42 Lenders. In such event (i) any Interest Rate Notice with respect to Eurodollar Rate Loans shall  
43 be automatically withdrawn and any Interest Rate Notice shall be deemed to be a request for a  
44 Base Rate Loan, (ii) each Eurodollar Rate Loan will automatically, on the last day of the then  
45 current Interest Period thereof, become a Base Rate Loan, and (iii) the obligations of the Lenders  
46 to make Eurodollar Rate Loans shall be suspended until the Agent or the Majority Lenders  
47 determine that the circumstances giving rise to such suspension no longer exist, whereupon the  
48

1 Agent or the Agent upon the instruction of the Majority Lenders, shall so notify the Borrower  
2 and the Lenders.  
3

4 (b) If at any time the Agent determines (which determination shall be  
5 conclusive absent manifest error) that (i) that adequate and reasonable methods do not exist for  
6 ascertaining the Eurodollar Rate that would otherwise determine the rate of interest to be  
7 applicable to any Eurodollar Rate Loan and such circumstance is unlikely to be temporary or (ii)  
8 any of (w) the supervisor for the administrator of the LIBO Screen Rate has made a public  
9 statement that the administrator of the LIBO Screen Rate is insolvent (and there is no successor  
10 administrator that will continue publication of the LIBO Screen Rate), (x) the administrator of  
11 the LIBO Screen Rate has made a public statement identifying a specific date after which the  
12 LIBO Screen Rate will permanently or indefinitely cease to be published by it (and there is no  
13 successor administrator that will continue publication of the LIBO Screen Rate), (y) the  
14 supervisor for the administrator of the LIBO Screen Rate has made a public statement identifying  
15 a specific date after which the LIBO Screen Rate will permanently or indefinitely cease to be  
16 published or (z) the supervisor for the administrator of the LIBO Screen Rate or a Governmental  
17 Authority having jurisdiction over the Agent has made a public statement identifying a specific  
18 date after which the LIBO Screen Rate may no longer be used for determining interest rates for  
19 loans, then the Agent and the Borrower shall endeavor to establish an alternate rate of interest to  
20 the LIBO Rate that gives due consideration to the then prevailing market convention for  
21 determining a rate of interest for syndicated loans in the United States at such time, and shall  
22 enter into an amendment to this Agreement to reflect such alternate rate of interest and such  
23 other related changes to this Agreement as may be applicable (but for the avoidance of doubt,  
24 such related changes shall not include a reduction of the applicable margin set forth in Section  
25 2.05(a)(i)); provided that, if such alternate rate of interest as so determined would be less than  
26 zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding  
27 anything to the contrary in Section 10.01, such amendment shall become effective without any  
28 further action or consent of any other party to this Agreement so long as the Agent shall not have  
29 received, within five Business Days of the date such amendment is provided to the Lenders, a  
30 written notice from the Majority Lenders stating that such Majority Lenders object to such  
31 amendment. Until an alternate rate of interest shall be determined in accordance with this clause  
32 (b) (but, in the case of the circumstances described in clause (ii)(w), clause (ii)(x) or clause  
33 (ii)(y) of the first sentence of this Section 3.03(b), only to the extent the LIBO Screen Rate for  
34 such Interest Period is not available or published at such time on a current basis), (x) any Interest  
35 Rate Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing  
36 as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Notice requests a  
37 Eurodollar Borrowing, such Borrowing shall be made as a Base Rate Borrowing.  
38

39 Section 3.04. Illegality. Notwithstanding any other provisions herein, if any present or  
40 future law, regulation, treaty or directive or in the interpretation or application thereof shall make  
41 it unlawful for any Lender to make or maintain any Eurodollar Rate Loan, such Lender shall  
42 promptly give Notice of such circumstances to the Borrower and the other Lenders and  
43 thereupon (a) the commitment of such Lender to make any Loan as a Eurodollar Rate Loan or  
44 Convert any portion of the Loans of another Type to a Eurodollar Rate Loan shall automatically  
45 be suspended, and (b) such Lender's portion of the Loans then outstanding as Eurodollar Rate  
46 Loans, if any, shall be Converted automatically to Base Rate Loans on the last day of each  
47 Interest Period applicable to each such Eurodollar Rate Loan or within such earlier period as may  
48

1 be required by law. Notwithstanding anything contained in this *Section 3.04* to the contrary, in  
2 the event that any Lender is unable to make or maintain any Loan as a Eurodollar Rate Loan as  
3 set forth in this *Section 3.04*, such Lender agrees to use reasonable efforts (consistent with its  
4 internal policy and legal and regulatory restrictions) to designate an alternative Eurodollar  
5 Lending Office so as to avoid such inability.

6  
7 Section 3.05. Additional Costs. If any Change in Law:  
8

9 (a) imposes, increases or renders applicable (other than to the extent  
10 specifically provided for elsewhere in this Agreement) any special deposit, reserve, assessment,  
11 liquidity, capital adequacy or other similar requirements (whether or not having the force of law)  
12 against assets held by, or deposits in or for the account of, or loans by, or commitments of an  
13 office of any Lender, or  
14

15 (b) imposes on any Lender or the Agent any other conditions or requirements  
16 with respect to this Agreement, the other Loan Documents, or any Loan or the commitment of  
17 such Lender hereunder,  
18

19 (c) and the foregoing has the result of:  
20

21 (i) increasing the cost or reducing the return to any Lender of making,  
22 funding, issuing, renewing, extending or maintaining any Loan as a Eurodollar Rate Loan  
23 or maintaining its commitment, or  
24

25 (ii) reducing the amount of principal, interest or other amount payable  
26 to such Lender hereunder on account of any Loan being a Eurodollar Rate Loan, or  
27

28 (iii) requiring such Lender to make any payment or to forego any  
29 interest or other sum payable hereunder, the amount of which payment or foregone  
30 interest or other sum is calculated by reference to the gross amount of any sum receivable  
31 or deemed received by such Lender from the Borrower hereunder,  
32

33 then, and in each such case, the Borrower will, upon demand made by such Lender at any time  
34 and from time to time and as often as the occasion therefor may arise, pay to such Lender such  
35 additional amounts as will be sufficient to compensate such Lender for such additional cost,  
36 reduction, payment or foregone interest or other sum. Notwithstanding anything contained in  
37 this *Section 3.05* to the contrary, upon the occurrence of any event set forth in this *Section 3.05*  
38 with respect to any Lender, such affected Lender agrees to use reasonable efforts (consistent with  
39 its internal policy and legal and regulatory restrictions) to designate an alternative Applicable  
40 Lending Office so as to avoid the effect of such event set forth in this *Section 3.05*.  
41

42 Section 3.06. Capital Adequacy. If any Change in Law affects the amount of capital or  
43 liquidity required or expected to be maintained by any Lender or any corporation controlling  
44 such Lender due to the existence of the Loans, and such Lender determines that the result of the  
45 foregoing is to increase the cost or reduce the return to such Lender of making or maintaining  
46 such Loans, then such Lender may notify the Borrower of such fact. To the extent that the costs  
47 of such increased capital or liquidity requirements are not reflected in the Base Rate and/or the  
48 Eurodollar Rate, the Borrower and such Lender shall thereafter attempt to negotiate in good



1 faith, within thirty (30) days of the day on which the Borrower receives such Notice, an  
2 adjustment payable hereunder that will adequately compensate such Lender in light of these  
3 circumstances, and in connection therewith, such Lender will provide to the Borrower reasonably  
4 detailed information regarding the increase of such Lender's costs. If the Borrower and such  
5 Lender are unable to agree to such adjustment within thirty (30) days of the date on which the  
6 Borrower receives such Notice, then commencing on the date of such Notice (but not earlier than  
7 the effective date of any such increased capital or liquidity requirement), the interest payable  
8 hereunder shall increase by an amount that will, in such Lender's reasonable determination,  
9 provide adequate compensation. Each Lender agrees that amounts claimed pursuant to this  
10 *Section 3.06* shall be made in good faith and on an equitable basis.  
11

12 **Section 3.07. Recovery of Additional Compensation.**  
13

14 (a) Certificate. If any Lender claims any additional amounts pursuant to  
15 *Section 3.05*, *Section 3.06* or *Section 3.08*, as the case may be, it shall provide to the Agent and  
16 the Borrower a certificate setting forth such additional amounts payable pursuant to *Section 3.06*,  
17 *Section 3.07* or *Section 3.09*, as the case may be, and a reasonable explanation of such amounts  
18 which are due (*provided that*, without limiting the requirement that reasonable detail be  
19 furnished, nothing herein shall require such Lender to disclose confidential information relating  
20 to the organization of its affairs). Such certificate shall be conclusive, absent manifest error, that  
21 such amounts are due and owing.  
22

23 (b) Delay in Requests. Delay on the part of any Lender to demand  
24 compensation pursuant to *Section 3.05*, *Section 3.06* or *Section 3.08*, as applicable, shall not  
25 constitute a waiver of such Lender's right to demand such compensation; *provided that* the  
26 Borrower shall not be required to compensate such Lender for any increased costs incurred or  
27 reductions in returns suffered more than ninety (90) days prior to the date such Lender notifies  
28 the Borrower of the Change in Law giving rise to such increased costs or reductions in return,  
29 and of such Lender's intention to claim compensation therefor (except that, if the Change in Law  
30 giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period  
31 referred to above shall be extended to include the period of retroactive effect thereof).  
32

33 **Section 3.08. Indemnity.** The Borrower agrees to indemnify each Lender and to hold  
34 each Lender harmless from and against any loss, cost or expense (including any such loss or  
35 expense arising from interest or fees payable by such Lender to lenders of funds obtained by it in  
36 order to maintain any Loan as a Eurodollar Rate Loan) that such Lender may sustain or incur as a  
37 consequence of (a) default by the Borrower in payment of the principal amount of or any interest  
38 on any Eurodollar Rate Loan as and when due and payable, (b) default by the Borrower in  
39 making a prepayment after the Borrower has given a Notice of prepayment pursuant to *Section*  
40 *2.02(e)*, (c) default by the Borrower in making a Borrowing after the Borrower has given a  
41 Borrowing Notice pursuant to *Section 2.02* or continuing all or any portion of the Loans, after  
42 the Borrower has given (or is deemed to have given) pursuant to *Section 2.06(e)* an Interest Rate  
43 Notice, (d) the making of any payment of principal of a Eurodollar Rate Loan or any Conversion  
44 of any such Eurodollar Rate Loan to a Base Rate Loan on a day that is not the last day of an  
45 Interest Period, including interest or fees payable by such Lender to lenders or funds obtained by  
46 it in order to maintain any such Eurodollar Rate Loans or (e) the assignment of any Eurodollar

1 Rate Loan prior to the last day of the Interest Period applicable thereto as a result of a request by  
2 the Borrower pursuant to Section 2.08.

3  
4 Section 3.09. Taxes.

5  
6 (a) Payments Free of Taxes. Any and all payments by or on account of any  
7 obligation of the Borrower under any Loan Document shall be made without deduction or  
8 withholding for any Taxes, except as required by applicable law. If any applicable law (as  
9 determined in the good faith discretion of an applicable Withholding Agent) requires the  
10 deduction or withholding of any Tax from any such payment by such Withholding Agent, then  
11 the applicable Withholding Agent shall be entitled to make such deduction or withholding and  
12 shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in  
13 accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by  
14 the Borrower shall be increased as necessary so that after such deduction or withholding has  
15 been made (including such deductions and withholdings applicable to additional sums payable  
16 under this *Section 3.09*) the applicable Recipient receives an amount equal to the sum it would  
17 have received had no such deduction or withholding been made.

18  
19 (b) Payment of Other Taxes by Borrower. The Borrower shall timely pay to  
20 the relevant Governmental Authority in accordance with applicable law, or at the option of the  
21 Agent timely reimburse it for the payment of, any Other Taxes.

22  
23 (c) Indemnification

24  
25 (i) Indemnification by Borrower. The Borrower shall indemnify each  
26 Recipient, within thirty (30) days after demand therefor, for the full amount of any  
27 Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable  
28 to amounts payable under this Section) payable or paid by such Recipient or required to  
29 be withheld or deducted from a payment to such Recipient and any reasonable expenses  
30 arising therefrom or with respect thereto, whether or not such Indemnified Taxes were  
31 correctly or legally imposed or asserted by the relevant Governmental Authority. A  
32 certificate as to the amount of such payment or liability delivered to the Borrower by a  
33 Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a  
34 Lender, shall be conclusive absent manifest error.

35  
36 (ii) Indemnification by the Lenders. Each Lender shall severally  
37 indemnify the Agent, within ten (10) days after demand therefor, for (i) any Indemnified  
38 Taxes attributable to such Lender (but only to the extent that the Borrower has not  
39 already indemnified the Agent for such Indemnified Taxes and without limiting the  
40 obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure  
41 to comply with the provisions of *Section 10.06* relating to the maintenance of a  
42 Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each  
43 case, that are payable or paid by the Agent in connection with any Loan Document, and  
44 any reasonable expenses arising therefrom or with respect thereto, whether or not such  
45 Taxes were correctly or legally imposed or asserted by the relevant Governmental  
46 Authority. A certificate as to the amount of such payment or liability delivered to any  
47 Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby

1 authorizes the Agent to set off and apply any and all amounts at any time owing to such  
2 Lender under any Loan Document or otherwise payable by the Agent to such Lender  
3 from any other source against any amount due to the Agent under this *Section 3.09(c)(ii)*.  
4

5 (d) Evidence of Payments. Within thirty (30) days after any payment of  
6 Taxes by the Borrower to a Governmental Authority pursuant to this *Section 3.09*, the Borrower  
7 shall deliver to the Agent the original or a certified copy of a receipt issued by such  
8 Governmental Authority evidencing such payment, a copy of the return reporting such payment  
9 or other evidence of such payment reasonably satisfactory to the Agent.  
10

11 (e) Status of Lenders.  
12

13 (i) Any Lender that is entitled to an exemption from or reduction of  
14 withholding Tax with respect to payments made under any Loan Document, shall deliver  
15 to the Borrower and the Agent, at the time or times reasonably requested by the Borrower  
16 or the Agent, such properly completed and executed documentation reasonably requested  
17 by the Borrower or the Agent as will permit such payments to be made without  
18 withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably  
19 requested by the Borrower or the Agent shall deliver such other documentation  
20 prescribed by applicable law or reasonably requested by the Borrower or the Agent as  
21 will enable the Borrower or the Agent to determine whether or not such Lender is subject  
22 to backup withholding or information reporting requirements. Notwithstanding anything  
23 to the contrary in the preceding two sentences, the completion, execution and submission  
24 of such documentation (other than such documentation set forth in *Section 3.09(e)(ii)(1)*,  
25 *(ii)(2)* and *(ii)(4)* below) shall not be required if in such Lender's reasonable judgment  
26 such completion, execution or submission would subject such Lender to any material  
27 unreimbursed cost or expense or would materially prejudice the legal or commercial  
28 position of such Lender.  
29

30 (ii) Without limiting the generality of the foregoing,  
31

32 (1) any Lender that is a U.S. Person shall deliver to the  
33 Borrower and the Agent on or prior to the date on which  
34 such Lender becomes a Lender under this Agreement (and  
35 from time to time thereafter upon the reasonable request of  
36 the Borrower or the Agent), executed originals of IRS Form  
37 W-9 certifying that such Lender is exempt from U.S.  
38 federal backup withholding tax;  
39

40 (2) any Foreign Lender shall, to the extent it is legally entitled  
41 to do so, deliver to the Borrower and the Agent (in such  
42 number of copies as shall be requested by the Recipient on  
43 or prior to the date on which such Foreign Lender becomes  
44 a Lender under this Agreement (and from time to time  
45 thereafter upon the reasonable request of the Borrower or  
46 the Agent), whichever of the following is applicable:

- 1 (A) in the case of a Foreign Lender claiming the  
2 benefits of an income tax treaty to which the United  
3 States of America is a party (x) with respect to  
4 payments of interest under any Loan Document,  
5 executed originals of IRS Form W-8BEN-E (or W-  
6 8BEN, as applicable) establishing an exemption  
7 from, or reduction of, U.S. federal withholding Tax  
8 pursuant to the “interest” article of such tax treaty  
9 and (y) with respect to any other applicable  
10 payments under any Loan Document, IRS Form  
11 W-8BEN-E (or W-8BEN, as applicable)  
12 establishing an exemption from, or reduction of,  
13 U.S. federal withholding Tax pursuant to the  
14 “business profits” or “other income” article of such  
15 tax treaty;  
16  
17 (B) executed originals of IRS Form W-8ECI;  
18  
19 (C) in the case of a Foreign Lender claiming the  
20 benefits of the exemption for portfolio interest  
21 under Section 881(c) of the Code, (x) a certificate  
22 substantially in the form of Exhibit G-1 to the effect  
23 that such Foreign Lender is not a “bank” within the  
24 meaning of Section 881(c)(3)(A) of the Code, a “10  
25 percent shareholder” of the Borrower within the  
26 meaning of Section 881(c)(3)(B) of the Code, or a  
27 “controlled foreign corporation” described in  
28 Section 881(c)(3)(C) of the Code (a “U.S. Tax  
29 Compliance Certificate”) and (y) executed originals  
30 of IRS Form W-8BEN-E (or W-8BEN, as  
31 applicable); or  
32  
33 (D) to the extent a Foreign Lender is not the beneficial  
34 owner, executed originals of IRS Form W-8IMY,  
35 accompanied by IRS Form W-8ECI, IRS Form  
36 W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax  
37 Compliance Certificate substantially in the form of  
38 Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or  
39 other certification documents from each beneficial  
40 owner, as applicable; *provided* that if such Foreign  
41 Lender is a partnership and one or more direct or  
42 indirect partners of such Foreign Lender are  
43 claiming the portfolio interest exemption, such  
44 Foreign Lender may provide a U.S. Tax  
45 Compliance Certificate substantially in the form of  
46 Exhibit G-4 on behalf of each such direct and  
47 indirect partner;

1 (3) any Foreign Lender, shall, to the extent it is legally entitled  
2 to do so, deliver to the Borrower and the Agent (in such  
3 number of copies as shall be requested by the recipient) on  
4 or prior to the date on which such Foreign Lender becomes  
5 a Lender under this Agreement (and from time to time  
6 thereafter upon the reasonable request of the Borrower or  
7 the Agent), executed originals of any other form prescribed  
8 by applicable law as a basis for claiming exemption from or  
9 a reduction in U.S. federal withholding Tax, duly  
10 completed, together with such supplementary  
11 documentation as may be prescribed by applicable law to  
12 permit the Borrower or the Agent to determine the  
13 withholding or deduction required to be made; and  
14

15 (4) if a payment made to a Lender under any Loan Document  
16 would be subject to U.S. federal withholding Tax imposed  
17 by FATCA if such Lender were to fail to comply with the  
18 applicable reporting requirements of FATCA (including  
19 those contained in Section 1471(b) or 1472(b) of the Code,  
20 as applicable), such Lender shall deliver to the Borrower  
21 and the Agent at the time or times prescribed by law and at  
22 such time or times reasonably requested by the Borrower or  
23 the Agent such documentation prescribed by applicable law  
24 (including as prescribed by Section 1471(b)(3)(C)(i) of the  
25 Code) and such additional documentation reasonably  
26 requested by the Borrower or the Agent as may be  
27 necessary for the Borrower and the Agent to comply with  
28 their obligations under FATCA and to determine that such  
29 Lender has complied with such Lender's obligations under  
30 FATCA or to determine the amount to deduct and withhold  
31 from such payment. Solely for purposes of this clause (4),  
32 "FATCA" shall include any amendments to FATCA made  
33 after the Effective Date.  
34

35 Each Lender agrees that if any form or certification it previously delivered  
36 expires or becomes obsolete or inaccurate in any respect, it shall update  
37 such form or certification or promptly notify the Borrower and the Agent  
38 in writing of its legal inability to do so.  
39

40 (f) Treatment of Certain Refunds. If any Party determines, in its sole  
41 discretion exercised in good faith, that it has received a refund of any Taxes as to which it has  
42 been indemnified pursuant to this *Section 3.09* (including by the payment of additional amounts  
43 pursuant to this *Section 3.09*), it shall pay to the indemnifying party an amount equal to such  
44 refund (but only to the extent of indemnity payments made under this *Section 3.09* with respect  
45 to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of  
46 such indemnified party and without interest (other than any interest paid by the relevant  
47 Governmental Authority with respect to such refund). Such indemnifying party, upon the



request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this *Section 3.09(f)* (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this *Section 3.09(f)*, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this *Section 3.09(f)* the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This *Section 3.09(f)* shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

#### Section 3.10. Defaulting Lenders; Cure.

(a) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of any Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to *Article 7* or otherwise), or received by the Agent from a Defaulting Lender by exercise of right of set-off, shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; *second*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *third*, if so agreed by the Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in *Section 6.01*, were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this *Section 3.10(a)* shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto (and the amounts thus applied or held shall discharge any corresponding obligations of the Borrower relating thereto).

(b) Defaulting Lender Cure. If the Borrower and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the Parties, whereupon as of the effective date specified in such Notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral or other acceptable credit

support), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders, whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected Parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any Party arising from that Lender having been a Defaulting Lender.

(c) Effect on Other Obligations. No commitment of any Lender shall be increased or otherwise affected, and except as otherwise expressly provided in this *Section 3.10*, performance by the Borrower of its obligations hereunder shall not be excused or otherwise modified as a result of the operation of this *Section 3.10*. The rights and remedies against a Defaulting Lender under this *Section 3.10* are in addition to any other rights and remedies which the Borrower, the Agent or any Lender may have against such Defaulting Lender.

#### ARTICLE 4 - REPRESENTATIONS AND WARRANTIES.

The Borrower represents and warrants to the Lenders and the Agent as follows:

##### Section 4.01. Corporate Authority.

(a) Incorporation; Good Standing. The Borrower (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, (ii) has all requisite corporate power to own its property and conduct its business as now conducted, and (iii) is in good standing as a foreign corporation and is duly authorized to do business in each jurisdiction where such qualification is necessary except where a failure to be so qualified would not have a material adverse effect on the business, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole.

(b) Authorization. The execution, delivery and performance of this Agreement, the other Loan Documents to which the Borrower is or is to become a party and the transactions contemplated hereby and thereby (i) are within the corporate authority of the Borrower, (ii) have been duly authorized by all necessary corporate proceedings, (iii) do not conflict with or result in any breach or contravention of any provision of any law, statute, rule or regulation to which the Borrower is subject or any material judgment, order, writ, injunction, license or permit applicable to the Borrower, except where any such conflict, breach, or contravention would not have a material adverse effect on the business, properties or financial condition of the Borrower and its Subsidiaries, taken as a whole, a material adverse effect on the ability of the Borrower to perform its obligations under the Loan Documents or a material adverse effect on the validity or enforceability of the Loan Documents, it being understood that the aggregate principal amount of the Loans and all other applicable indebtedness, equity securities and all other liabilities and obligations as guarantor, endorser or surety of the Borrower at any one time outstanding will not exceed the applicable limits authorized by the FPSC Financing Order, and (iv) do not conflict with any provision of the corporate charter, as amended, or bylaws, as amended, of, or any material agreement or other material instrument

1 binding upon, the Borrower it being understood that the aggregate principal amount of the Loans  
2 and all other applicable indebtedness, equity securities and all other liabilities and obligations as  
3 guarantor, endorser or surety of the Borrower at any one time outstanding will not exceed the  
4 applicable limits authorized by the FPSC Financing Order. This Agreement and each other Loan  
5 Document to which the Borrower is a party have been duly executed and delivered by the  
6 Borrower.  
7

8 (c) Enforceability. The execution and delivery by the Borrower of this  
9 Agreement and the other Loan Documents will result in valid and legally binding obligations of  
10 the Borrower, enforceable against it in accordance with the respective terms and provisions  
11 hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization,  
12 receivership, moratorium or other laws affecting creditors' rights and remedies generally and  
13 general principles of equity.  
14

15 Section 4.02. Governmental Approvals. The execution and delivery by the Borrower of  
16 this Agreement and the other Loan Documents, and the performance by it of its obligations  
17 thereunder, do not require the approval or consent of, or filing with, any Governmental  
18 Authority, except those which have been obtained on or prior to the date hereof, it being  
19 understood that the aggregate principal amount of the Loans and all other applicable  
20 indebtedness, equity securities and all other liabilities and obligations as guarantor, endorser or  
21 surety of the Borrower at any one time outstanding will not exceed the applicable limits  
22 authorized by the FPSC Financing Order.  
23

24 Section 4.03. Title to Properties. The Borrower or one or more of its consolidated  
25 subsidiaries owns all of the assets reflected as the Borrower's assets in the consolidated balance  
26 sheet of the Borrower as at December 31, 2018 referred to in *Section 4.04* or acquired since that  
27 date (except property and assets sold or otherwise disposed of in the ordinary course of business  
28 or as otherwise permitted pursuant to the provisions of this Agreement since that date and except  
29 for such assets owned from time to time by any entity whose assets are consolidated on the  
30 balance sheet of the Borrower and its Subsidiaries solely as a result of the operation of FASB  
31 ASC 810), subject to no Liens, except for such matters set forth in *Schedule 4.03* or otherwise  
32 permitted pursuant to the provisions of this Agreement and Liens upon the assets of any  
33 Subsidiary of the Borrower.  
34

35 Section 4.04. Financial Statements. The consolidated balance sheet of the Borrower and  
36 its Subsidiaries for the period ending December 31, 2018, and related consolidated income  
37 statements of the Borrower and its Subsidiaries for the fiscal period then ended, and have been  
38 certified by the Borrower's independent public accountants. The financial statements of the  
39 Borrower have been prepared in accordance with generally accepted accounting principles and  
40 present fairly the consolidated financial position and results of operations of the Borrower and its  
41 Subsidiaries, taken as a whole, at the respective dates and for the respective periods to which  
42 they apply. As of the Effective Date, there has been no material adverse change in the business  
43 or financial condition of the Borrower and its Subsidiaries, taken as a whole, since December 31,  
44 2018, except as set forth in *Schedule 4.04*.  
45

46 Section 4.05. Franchises, Patents, Copyrights, Etc. The Borrower possesses all material  
47 franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in

1 respect of the foregoing, adequate for the conduct of its business substantially as now conducted,  
2 and, except where in any such case any such conflict would not have a material adverse effect on  
3 the business, properties or financial condition of the Borrower and its Subsidiaries, taken as a  
4 whole, without known conflict with any rights of others.

5  
6 Section 4.06. Litigation. Except as described in Schedule 4.06, as of the Effective Date,  
7 there is no litigation or other legal proceedings pending, or, to the knowledge of the Borrower,  
8 threatened against the Borrower or any of its Subsidiaries that is reasonably likely to be  
9 determined adversely to the Borrower or any of its Subsidiaries, and if determined adversely to  
10 the Borrower or any of its Subsidiaries, would reasonably be expected to have a material adverse  
11 effect on the business, properties or financial condition of the Borrower and its Subsidiaries,  
12 taken as a whole, or to materially impair the right of the Borrower to carry on its business  
13 substantially as now conducted by it. There is no litigation or other legal proceedings pending,  
14 or, to the knowledge of the Borrower, threatened against the Borrower or any of its Subsidiaries  
15 that if determined adversely to the Borrower or any of its Subsidiaries could reasonably be  
16 expected to question the validity of this Agreement or any of the other Loan Documents or any  
17 actions taken or to be taken pursuant hereto or thereto.

18  
19 Section 4.07. Compliance With Other Instruments, Laws, Etc. The Borrower is not in  
20 violation of any provision of its charter documents, bylaws, or any agreement or instrument to  
21 which it is subject or by which it or any of its properties is bound or any material decree, order,  
22 judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that  
23 would materially and adversely affect the financial condition, properties or business of the  
24 Borrower and its Subsidiaries, taken as a whole.

25  
26 Section 4.08. Tax Status. The Borrower has (a) prepared and, giving effect to all proper  
27 extensions, timely filed all federal and state income tax returns and, to the best knowledge of the  
28 Borrower, all other material tax returns, reports and declarations required by any applicable  
29 jurisdiction to which the Borrower is legally subject, which, giving effect to all proper  
30 extensions, were required to be filed prior to the Effective Date, (b) paid all taxes and other  
31 governmental assessments and charges shown or determined to be due on such returns, reports  
32 and declarations, except those being contested in good faith and by appropriate proceedings, and  
33 (c) to the extent deemed necessary or appropriate by the Borrower, set aside on its books  
34 provisions reasonably adequate for the payment of all known taxes for periods subsequent to the  
35 periods to which such returns, reports or declarations apply.

36  
37 Section 4.09. No Default. No Default has occurred and is continuing.

38  
39 Section 4.10. Investment Company Act. The Borrower is not an “investment company”,  
40 or an “affiliated company” or a “principal underwriter” of an “investment company”, as such  
41 terms are defined in the Investment Company Act of 1940.

42  
43 Section 4.11. Employee Benefit Plans.

44  
45 (a) In General. Each Employee Benefit Plan sponsored by the Borrower or its  
46 Subsidiaries has been maintained and operated in compliance in all material respects with the

1 provisions of ERISA and, to the extent applicable, the Code, including but not limited to the  
2 provisions thereunder respecting prohibited transactions.

3  
4 (b) Terminability of Welfare Plans. Under each Employee Benefit Plan  
5 sponsored by the Borrower or its Subsidiaries which is an employee welfare benefit plan within  
6 the meaning of §3(1) or §3(2)(B) of ERISA, no benefits are due unless the event giving rise to  
7 the benefit entitlement occurs prior to plan termination (except as required by Title I, Part 6 of  
8 ERISA). The Borrower and its Subsidiaries may terminate their respective participation in each  
9 such plan at any time (other than a plan that provides benefits pursuant to a collective bargaining  
10 agreement) in the discretion of the Borrower or its Subsidiaries without liability to any Person.

11  
12 (c) Guaranteed Pension Plans. As of the Effective Date, each contribution  
13 required to be made to a Guaranteed Pension Plan by the Borrower or an ERISA Affiliate,  
14 whether required to satisfy the minimum funding requirements described in §302 or §303 of  
15 ERISA, the notice or lien provisions of §303(k) of ERISA, or otherwise, has been timely made.  
16 As of the Effective Date, no waiver from the minimum funding standards or extension of  
17 amortization periods has been received with respect to any Guaranteed Pension Plan. As of the  
18 Effective Date, no liability to the PBGC (other than required insurance premiums, all of which  
19 have been paid) has been incurred by the Borrower or any ERISA Affiliate with respect to any  
20 Guaranteed Pension Plan and there has not been any ERISA Reportable Event which presents a  
21 material risk of termination of any Guaranteed Pension Plan by the PBGC. Based on the latest  
22 valuation of each Guaranteed Pension Plan (which in each case occurred within twelve months  
23 of the date of this representation), and on the actuarial methods and assumptions employed for  
24 that valuation, the aggregate benefit liabilities of all such Guaranteed Pension Plans within the  
25 meaning of §4001 of ERISA did not exceed the aggregate value of the assets of all such  
26 Guaranteed Pension Plans by more than \$500,000.

27  
28 (d) Multiemployer Plans. Neither the Borrower nor any ERISA Affiliate has  
29 incurred any material unpaid liability (including secondary liability) to any Multiemployer Plan  
30 as a result of a complete or partial withdrawal from such Multiemployer Plan under §4201 of  
31 ERISA or as a result of a sale of assets described in §4204 of ERISA. Neither the Borrower nor  
32 any ERISA Affiliate has been notified that any Multiemployer Plan is in reorganization,  
33 insolvent or “endangered” or “critical” status under and within the meaning of §4241, §4245 or  
34 §305, respectively, of ERISA or that any Multiemployer Plan intends to terminate or has been  
35 terminated under §4041A of ERISA.

36  
37 Section 4.12. Use of Proceeds. The proceeds of the Loans shall be used for the general  
38 corporate purposes of the Borrower.

39  
40 Section 4.13. Compliance with Margin Stock Regulations. The Borrower is not engaged  
41 principally, or as one of its important activities, in the business of extending credit for the  
42 purpose of purchasing or carrying “margin stock” (within the meaning of Regulation U or  
43 Regulation X of the Federal Reserve Board), and no part of the proceeds of the Loans will be  
44 used to purchase or carry any “margin stock,” to extend credit to others for the purpose of  
45 purchasing or carrying any “margin stock” or for any other purpose which might constitute this  
46 transaction a “purpose credit” within the meaning of Regulation U or Regulation X. In addition,



not more than twenty-five percent (25%) of the value (as determined by any reasonable method) of the assets of the Borrower consists of margin stock.

#### Section 4.14. USA PATRIOT ACT, OFAC and Other Regulations.

(a) Neither the Borrower, any of its Subsidiaries or, to the knowledge of the Borrower, any of the affiliates or respective officers, directors, brokers or agents of the Borrower, such Subsidiary or affiliate (i) has violated any applicable anti-corruption laws, Sanctions or Anti-Terrorism Laws or (ii) has engaged in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering.

(b) Neither the Borrower, any of its Subsidiaries or, to the knowledge of the Borrower, any of the affiliates or respective officers, directors, employees, brokers or agents of the Borrower, such Subsidiary or affiliate is a Person that is, or is owned or controlled by Persons that are: (i) the subject of any Sanctions, or (ii) located, organized or resident in a country, region or territory that is, or whose government is, the subject of Sanctions.

(c) Neither the Borrower, any of its Subsidiaries or, to the knowledge of the Borrower, any of the affiliates or respective officers, directors, brokers or agents of the Borrower, such Subsidiary or affiliate acting or benefiting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of goods, services or money to or for the benefit of any Person, or in any country or territory, that is the subject of any Sanctions, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any Sanctions or Anti-Terrorism Law or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Sanctions or Anti-Terrorism Law.

(d) The Borrower has and, to the knowledge of the Borrower, its Subsidiaries have, conducted their business in compliance with applicable Sanctions, anti-corruption laws, the USA PATRIOT Act, Anti-Terrorism Laws and money laundering laws and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

### **ARTICLE 5 - COVENANTS OF BORROWER**

The Borrower covenants and agrees that, so long as any portion of the Loans, any Note as may be issued hereunder:

Section 5.01. Punctual Payment. The Borrower will duly and punctually pay or cause to be paid (a) the principal and interest on the Loans, and (b) the fees and all other amounts provided for in this Agreement and the other Loan Documents.

Section 5.02. Maintenance of Office. The Borrower will maintain its chief executive office at 700 Universe Boulevard, Juno Beach, Florida 33408-8801, or at such other place in the United States of America as the Borrower shall designate by Notice to the Agent, in accordance with *Section 10.02*.

1           Section 5.03. Records and Accounts. The Borrower will, (a) keep true and accurate  
2 records and books of account in which full, true and correct entries will be made in accordance  
3 with generally accepted accounting principles and (b) to the extent deemed necessary or  
4 appropriate by the Borrower, maintain adequate accounts and reserves for all taxes (including  
5 income taxes), depreciation, depletion, obsolescence and amortization of its properties,  
6 contingencies, and other reserves.  
7

8           Section 5.04. Financial Statements, Certificates and Information. The Borrower will  
9 deliver to the Agent for distribution to the Lenders, which, for the purposes of this *Section 5.04*,  
10 may be made available electronically by the Borrower as provided below:  
11

12           (a) as soon as practicable, but in any event not later than one hundred twenty  
13 (120) days after the end of each fiscal year of the Borrower, the consolidated balance sheet of the  
14 Borrower and its subsidiaries as at the end of such year, and the related consolidated statements  
15 of income and consolidated statements of cash flows for such year, each setting forth in  
16 comparative form the figures for the previous fiscal year or year-end, as applicable, and all such  
17 consolidated statements to be prepared in accordance with generally accepted accounting  
18 principles, and certified by Deloitte & Touche LLP or by other independent public accountants  
19 reasonably satisfactory to the Agent. The Agent and each of the Lenders hereby agree that the  
20 foregoing requirement shall be satisfied by delivery (or deemed delivery in accordance with the  
21 final paragraph of this *Section 5.04*) to each of the Lenders of the Borrower's annual report on  
22 Form 10-K for the period for which such financial statements are to be delivered, together with a  
23 written statement from the principal financial or accounting officer, Treasurer or Assistant  
24 Treasurer of the Borrower to the effect that such officer has read a copy of this Agreement, and  
25 that, in making the examination necessary to said certification, he or she has obtained no  
26 knowledge of any Default, or, if such officer shall have obtained knowledge of any then existing  
27 Default, he or she shall disclose in such statement any such Default; provided that such officer  
28 shall not be liable to the Agent or the Lenders for failure to obtain knowledge of any Default;  
29

30           (b) as soon as practicable, but in any event not later than sixty (60) days after  
31 the end of each of the first three (3) fiscal quarters of the Borrower, copies of the unaudited  
32 consolidated balance sheet of the Borrower and its subsidiaries as at the end of such quarter, and  
33 the related consolidated statements of income and consolidated statements of cash flows for the  
34 portion of the fiscal year to which they apply, all prepared in accordance with generally accepted  
35 accounting principles, together with a certification by the principal financial or accounting  
36 officer, Treasurer or Assistant Treasurer of the Borrower that the information contained in such  
37 financial statements fairly presents the financial position of the Borrower and its Subsidiaries as  
38 of the end of such quarter (subject to year-end adjustments). The Agent and each of the Lenders  
39 hereby agree that the foregoing requirement shall be satisfied by delivery (or deemed delivery in  
40 accordance with the final paragraph of this *Section 5.04*) to each of the Lenders of the  
41 Borrower's quarterly report on Form 10-Q for the period for which such financial statements are  
42 being delivered, together with a written statement from the principal financial or accounting  
43 officer, Treasurer or Assistant Treasurer of the Borrower to the effect that such officer has read a  
44 copy of this Agreement, and that, in making the examination necessary to said certification, he or  
45 she has obtained no knowledge of any Default, or, if such officer has obtained knowledge of any  
46 then existing Default, he or she shall disclose in such statement any such Default; provided that

1 such officer shall not be liable to the Agent or the Lenders for failure to obtain knowledge of any  
2 Default;

3  
4 (c) contemporaneously with the filing or mailing thereof, copies of all  
5 material of a financial nature filed by the Borrower with the Securities and Exchange  
6 Commission;

7  
8 (d) promptly after the commencement thereof, Notice of all actions and  
9 proceedings before any court, governmental agency or arbitrator of the type described in *Section*  
10 *4.06* to which the Borrower is a party or its properties are subject; and

11  
12 (e) from time to time such other financial data and information as the Agent  
13 or any Lender may reasonably request, including, without limitation, information or  
14 certifications as may be required under the Beneficial Ownership Regulation, if applicable.

15  
16 Reports or financial information required to be delivered pursuant to this *Section 5.04* shall, to  
17 the extent any such financial statements, reports, proxy statements or other materials are included  
18 in materials otherwise filed with the Securities and Exchange Commission, be deemed to be  
19 delivered hereunder on the date of such filing, and may be delivered electronically and if so,  
20 shall be deemed to have been delivered on the date on which the Borrower gives notice to the  
21 Lender that the Borrower has posted such report or financial information or provides a link  
22 thereto on the Borrower's website on the Internet or on Intralinks or a substantially similar  
23 transmission system to which access is available to the Lender.

24  
25 Section 5.05. Default Notification. The Borrower will promptly provide Notice to the  
26 Agent regarding the occurrence of any Default of which the principal financial or accounting  
27 officer, Treasurer or Assistant Treasurer of the Borrower has actual knowledge or notice.

28  
29 Section 5.06. Corporate Existence: Maintenance of Properties. The Borrower will do or  
30 cause to be done all things necessary to preserve and keep in full force and effect its corporate  
31 existence (except as otherwise expressly permitted by the first sentence of *Section 5.11*), and will  
32 do or cause to be done all things commercially reasonable to preserve and keep in full force and  
33 effect its franchises; and the Borrower will, (a) cause all of its properties used and useful in the  
34 conduct of its business to be maintained and kept in good condition, repair and working order  
35 and supplied with all necessary equipment, and (b) cause to be made all necessary repairs,  
36 renewals, replacements, betterments and improvements thereof, all as in the judgment of the  
37 Borrower may be necessary, so that the business carried on in connection therewith may be  
38 properly and advantageously conducted at all times; *provided that* nothing in this *Section 5.06*  
39 shall prevent the Borrower or any of its Subsidiaries from discontinuing the operation and  
40 maintenance of any of its properties if such discontinuance is, in the sole judgment of the  
41 Borrower or its Subsidiary, as the case may be, desirable in the conduct of its business and does  
42 not in the aggregate materially adversely affect the business, properties or financial condition of  
43 the Borrower and its Subsidiaries, taken as a whole; *provided further that* nothing in this *Section*  
44 *5.6* shall affect or impair in any manner the ability of the Borrower or any of its Subsidiaries to  
45 sell or dispose of all or any portion of its property and assets (including, without limitation, its  
46 shares in any Subsidiary or all or any portion of the property or assets of any Subsidiary); and  
47 *provided finally that*, in the event of any loss or damage to its property or assets, the Borrower

1 and its Subsidiaries shall only be obligated to repair, replace or restore any such property or  
2 assets if the Bonower or the relevant Subsidiary has determined that such repair, replacement or  
3 restoration is necessary or appropriate and any such repair, replacement and/or restoration may  
4 be effectuated by the Bonower or such Subsidiary in such time period and in the manner it  
5 deems appropriate.  
6

7 Section 5.07. Taxes. The Bonower will duly pay and discharge, or cause to be paid and  
8 discharged, before the same shall become overdue, all material taxes, assessments and other  
9 governmental charges (other than taxes, assessments and other governmental charges that in the  
10 aggregate are not material to the business or assets of the Bonower) imposed upon it and its real  
11 properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as  
12 well as all claims for labor, materials, or supplies that if unpaid might by law become a Lien or  
13 charge upon any of its property; provided that any such tax, assessment, charge, levy or claim  
14 need not be paid if the validity or amount thereof shall currently be contested in good faith by  
15 appropriate proceedings and, to the extent that the Bonower deems necessary, the Bonower shall  
16 have set aside on its books adequate reserves with respect thereto; and provided further that the  
17 Bonower will pay all such taxes, assessments, charges, levies or claims forthwith upon the  
18 commencement of proceedings to foreclose any Lien that may have attached as security therefor.  
19

20 Section 5.08. Visits by Lenders. The Bonower shall permit the Lenders, through the  
21 Agent or any of the Lenders' other designated representatives, to visit the properties of the  
22 Bonower and to discuss the affairs, finances and accounts of the Bonower with, and to be  
23 advised as to the same by, its officers, upon reasonable Notice and all at such reasonable times  
24 and intervals as the Agent or any Lender may reasonably request.  
25

26 Section 5.09. Compliance with Laws, Contracts, Licenses, and Permits. The Bonower  
27 will comply with (a) the laws and regulations applicable to the Bonower (including, without  
28 limitation, ERISA) wherever its business is conducted, (b) the provisions of its charter  
29 documents and by-laws, (c) all agreements and instruments by which it or any of its properties  
30 may be bound, and (d) all decrees, orders, and judgments applicable to the Bonower, except  
31 where in any such case the failure to comply with any of the foregoing would not materially  
32 adversely affect the business, property or financial condition of the Bonower and its  
33 Subsidiaries, taken as a whole. If at any time while any portion of the Loans or any other  
34 amount hereunder or any commitment is outstanding, any authorization, consent, approval,  
35 permit or license from any officer, agency or instrumentality of any Governmental Authority  
36 shall become necessary or required in order that the Bonower may fulfill any of its obligations  
37 hereunder or under any other Loan Document, the Bonower will promptly take or cause to be  
38 taken all reasonable steps within the power of the Bonower to obtain such authorization,  
39 consent, approval, permit or license and furnish the Agent with evidence thereof.  
40

41 Section 5.10. Use of Proceeds. The Bonower will use the proceeds of the Loans solely  
42 for the purposes described in Section 4.12.  
43

44 Section 5.11. Prohibition of Fundamental Changes. The Bonower will not consummate  
45 any transaction of merger or consolidation or amalgamation, or liquidation or dissolution;  
[REDACTED]



2  
3  
4 Section 5.12. [Reserved.]

5  
6 Section 5.13. Indebtedness. The Bonower will insure that all obligations of the  
7 Bonower under this Agreement and the other Loan Documents rank and will rank at least pari  
8 passu in respect of priority of payment by the Bonower and priority of lien, charge or other  
9 security in respect of assets of the Bonower with all other senior unsecured and unsubordinated  
10 loans, debts, guarantees or other obligations for money bonowed of the Bonower without any  
11 preference one above the other by reason of priority of date incuned, cunency of payment or  
12 othelwise, except as permitted pursuant to the provisions of *Section 5.14*.

13  
14 Section 5.14. Liens. The Bonower will not create any Lien upon or with respect to any  
15 of its propeties, or assign any right to receive income, in each case to secure or provide for the  
16 payment of any debt of any Person, other than:

17  
18 (i) purchase money liens or purchase money security interests upon or  
19 in any propety acquired by the Bonower in the ordinaly course of business to secure the  
20 purchase price or constrction cost of such propety or to secure indebtedness incuned  
21 solely for the pmpose of financing the acquisition of such propety or construction of  
22 improvements on such propety;

23  
24 (ii) Liens existing on propety acquired by the Bonower at the time of  
25 its acquisition, provided that such Liens were not created in contemplation of such  
26 acquisition and do not extend to any assets other than the propety so acquired;

27  
28 (iii) Liens securing Nomecourse Indebtedness created for the pmpose  
29 of financing the acquisition, improvement or constrction of the propety subject to such  
30 Liens;

31  
32 (iv) the replacement, extension or renewal of any Lien permitted by  
33 clauses (i) through (iii) of this *Section 5.14* upon or in the same propety theretofore



1 subject thereto or the replacement, extension or renewal (without increase in the amount  
2 or change in the direct or indirect obligor) of the indebtedness secured thereby;

3 (v) Liens upon or with respect to margin stock;

4  
5 (vi) (a) deposits or pledges to secure payment of workers'  
6 compensation, unemployment insurance, old age pensions or other social security; (b)  
7 deposits or pledges to secure performance of bids, tenders, contracts (other than contracts  
8 for the payment of money) or leases, public or statutory obligations, surety or appeal  
9 bonds or other deposits or pledges for purposes of like general nature in the ordinary  
10 course of business; (c) Liens for property taxes not delinquent and Liens for taxes which  
11 in good faith are being contested or litigated and, to the extent that the BoITower deems  
12 necessary, the BoITower shall have set aside on its books adequate reserves with respect  
13 thereto; (d) mechanics', carriers', workmen's, repairmen's or other like Liens arising in  
14 the ordinary course of business securing obligations which are not overdue for a period of  
15 sixty (60) days or more or which are in good faith being contested or litigated and, to the  
16 extent that the BoITower deems necessary, the BoITower shall have set aside on its books  
17 adequate reserves with respect thereto; and (e) other matters described in Schedule 4.03;

18  
19 (vii) any Liens securing any pollution control revenue bonds, solid  
20 waste disposal revenue bonds, industrial development revenue bonds or other taxable or  
21 tax-exempt bonds or similar obligations issued by or on behalf of the BoITower from time  
22 to time, and any Liens given to secure any refinancing or refunding of any such  
23 obligations; and

24  
25 (viii) judgment Liens that do not constitute an Event of Default;

26  
27 (ix) Liens arising by virtue of any statutory or common law provision  
28 relating to bankers' Liens, rights of setoff or similar rights as to deposit accounts or other  
29 funds maintained with a creditor depository institution; and

30  
31 (x) any other Liens or security interests (other than Liens or security  
32 interests described in clauses (i) through (ix) of this *Section 5.14*), if the aggregate  
33 principal amount of the indebtedness secured by all such Liens and security interests  
34 (without duplication) does not exceed in the aggregate \$50,000,000 at any one time  
35 outstanding;



37  
38 Section 5.15. Maintenance of Insurance. The BoITower shall maintain insurance with  
39 responsible and reputable insurance companies or associations in such amounts and covering  
40 such risks as is usually carried by companies engaged in similar businesses and owning similar  
41 properties in the same general areas in which the BoITower operates; provided, however, that the  
42 BoITower may self-insure (which may include the establishment of reserves, allocation of  
43 resources, establishment of credit facilities and other similar arrangements) to the same extent as

1 other companies engaged in similar businesses and owning similar properties in the same general  
2 areas in which the Borrower operates and to the extent consistent with prudent business practice.  
3

4 Section 5.16. Employee Benefit Plans. The Borrower will not:  
5

6 (a) engage in any non-exempt “prohibited transaction” within the meaning of  
7 §406 of ERISA or §4975 of the Code which could result in a material liability for the Borrower;  
8 or  
9

10 (b) permit any Guaranteed Pension Plan sponsored by the Borrower or its  
11 ERISA Affiliates to fail to meet the “minimum funding standards” described in §302 and §303  
12 of ERISA, whether or not such deficiency is or may be waived; or  
13

14 (c) fail to contribute to any Guaranteed Pension Plan sponsored by the  
15 Borrower or its ERISA Affiliates to an extent which, or terminate any Guaranteed Pension Plan  
16 sponsored by the Borrower or its ERISA Affiliates in a manner which, could result in the  
17 imposition of a lien or encumbrance on the assets of the Borrower or any of its Subsidiaries  
18 pursuant to §303(k) or §4068 of ERISA; or  
19

20 (d) permit or take any action which would result in the aggregate benefit  
21 liabilities (within the meaning of §4001(a)(16) of ERISA) of Guaranteed Pension Plans  
22 sponsored by the Borrower or its ERISA Affiliates exceeding the value of the aggregate assets of  
23 such plans by more than the amount set forth in *Section 4.11(c)*. For purposes of this covenant,  
24 poor investment performance by any trustee or investment management of a Guaranteed Pension  
25 Plan shall not be considered as a breach of this covenant.  
26

27 Section 5.17. Compliance with Anti-Corruption Laws and Anti-Terrorism Regulations.  
28 The Borrower shall not:  
29

30 (a) Violate any applicable anti-corruption laws, Sanctions or any Anti-  
31 Terrorism Laws or engage in any transaction, investment, undertaking or activity that conceals  
32 the identity, source or destination of the proceeds from any category of prohibited offenses  
33 designated by the Organization for Economic Co-operation and Development’s Financial  
34 Action Task Force on Money Laundering.  
35

36 (b) Use, directly or indirectly, the proceeds of the Loans, or lend, contribute  
37 or otherwise make available such proceeds to any subsidiary, joint venture partner or other  
38 Person, (x) in violation of applicable anti-corruption laws, the USA PATRIOT Act, anti-  
39 terrorism laws or money laundering laws, (y) to fund any activities or business of or with any  
40 Person, or in any country, region or territory, that, is, or whose government is, the subject of  
41 Sanctions at the time of such funding, or (z) in any other manner that would result in a violation  
42 of Sanctions by any Person (including any Person participating in the Loans, whether as  
43 underwriter, advisor, investor, or otherwise).  
44

45 (c) Deal in, or otherwise engage in any transaction related to, any property or  
46 interests in property blocked pursuant to any Sanctions or Anti-Terrorism Law, or (ii) engage in  
47 or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or  
48 avoiding, or attempt to violate, any of the prohibitions set forth in any Anti-Terrorism Law.  
49

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 **ARTICLE 6- CONDITIONS PRECEDENT.**  
13

14 Section 6.01. Conditions Precedent to Effectiveness. The effectiveness of this  
15 Agreement and the Initial Lender's commitment to make Loans pursuant to *Section 2.01* is  
16 subject to the following conditions precedent, each of which shall have been met or performed in  
17 the reasonable opinion of the Agent:  
18

19 (a) Execution of this Agreement. This Agreement shall have been  
20 duly executed and delivered by the Parties.  
21

22 (b) Corporate Action. All corporate action necessary for the valid execution,  
23 delivery and performance (i) by the Bonower of this Agreement and each other Loan Document  
24 to which it is a party shall have been duly and effectively taken, and evidence thereof satisfactory  
25 to the Lenders shall have been provided to the Agent.  
26

27 (c) Incumbency Certificate. The Agent shall have received an incumbency  
28 certificate from the Bonower, dated as of the Effective Date, signed by a duly authorized officer  
29 of the Bonower, and giving the name and bearing a specimen signature of each individual who  
30 shall be authorized: (1) to sign in the name and on behalf of the Bonower each of the Loan  
31 Documents to which it is a party, (2) in the case of the Bonower, to make requests for Loans or  
32 Conversion requests and (3) to give notices and to take other action under the Loan Documents.  
33

34 (d) Bonower's Certificate. The Agent shall have received from the Bonower  
35 a certificate dated as of the Effective Date substantially in the form of *Exhibit D*.  
36

37 (e) Opinion of Counsel. The Agent shall have received a favorable opinion  
38 addressed to the Lenders and the Agent, dated as of the Effective Date, substantially in the form  
39 of *Exhibit F* attached hereto, from Squire Patton Boggs (US) LLP, counsel to the Bonower (and  
40 the Bonower instructs such counsel to deliver such opinion to the Lenders and the Agent).

1 (f) No Legal Impediment. No change shall have occurred in any law or  
2 regulations thereunder or interpretations thereof that in the reasonable opinion of any Lender  
3 would make it illegal for such Lender to make any Loan.  
4

5 (g) Governmental Regulation. Each Lender shall have received such  
6 statements in substance and form reasonably satisfactory to such Lender as such Lender shall  
7 require for the purpose of compliance with any applicable regulations of the Comptroller of the  
8 Currency or the Board of Governors of the Federal Reserve System.  
9

10 (h) Note. The Note (if same is requested by the Lender) shall have been duly  
11 executed and delivered by the Borrower to [REDACTED], as the sole Lender on the Effective  
12 Date.  
13

14 (i) Proceedings and Documents. All proceedings in connection with the  
15 transactions contemplated by this Agreement, the other Loan Documents and all other  
16 documents incident thereto shall be satisfactory in substance and in form to the Lenders and to  
17 counsel for the Agent and such counsel shall have received all information and such counterpart  
18 originals or certified or other copies of such documents as the Agent may reasonably request,  
19 including, without limitation, information or certifications as may be required under applicable  
20 “know your customer” requirements and the Beneficial Ownership Regulation, if applicable.  
21

## 22 **ARTICLE 7 - EVENTS OF DEFAULT, ACCELERATION, ETC.**

23

24 Section 7.01. Events of Default. The following events shall constitute “Events of  
25 Default” for purposes of this Agreement:  
26

27 (a) the Borrower shall fail to pay any principal of the Loan when the same  
28 shall become due and payable, whether at the stated date of maturity or any accelerated date of  
29 maturity or at any other date fixed for payment; or  
30

31 (b) the Borrower shall fail to pay any interest on the Loan, any fees or other  
32 sums due hereunder or under any of the other Loan Documents, for a period of [REDACTED]  
33 [REDACTED] following the date when the same shall become due and payable, whether at the stated date  
34 of maturity or any accelerated date of maturity or at any other date fixed for payment; or  
35

36 (c) (i) the Borrower shall fail to perform any term, covenant or agreement  
37 contained in *Section 5.05*, *Section 5.06* (but only as to corporate existence), *Section 5.10*, *Section*  
38 *5.11* (upon the consummation of any transaction prohibited by said *Section 5.11*), *Section 5.14*,  
39 *Section 5.17(b)* or *Section 5.18* or (ii) the Borrower shall fail to perform any term, covenant or  
40 agreement contained herein or in any of the other Loan Documents (other than those specified  
41 elsewhere in this *Section 7.01*) for [REDACTED] after Notice of such failure has been given to  
42 the Borrower by the Agent or any Lender; or  
43

44 (d) any representation or warranty of the Borrower in this Agreement or any  
45 of the other Loan Documents or in any other document or instrument delivered pursuant to or in  
46 connection with this Agreement shall prove to have been false in any material respect upon the  
47 date when made or deemed to have been made by the terms of this Agreement; or

1 (e) the Borrower shall default in the payment when due of any principal of or  
2 any interest on any Funded Debt aggregating [REDACTED] or more, or fail to observe or perform  
3 any material term, covenant or agreement contained in any agreement by which it is bound,  
4 evidencing or securing Funded Debt, in an aggregate amount of [REDACTED] or more, for such  
5 period of time as would permit (assuming the giving of appropriate notice or the lapse of time if  
6 required) the holder or holders thereof or of any obligations issued thereunder to accelerate the  
7 maturity thereof, unless such failure shall have been cured by the Borrower or effectively waived  
8 by such holder or holders; or  
9

10 (f) the Borrower shall (1) voluntarily terminate operations or apply for or  
11 consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or  
12 liquidator of the Borrower or of all or a substantial part of the assets of the Borrower (2) admit in  
13 writing its inability, or be generally unable, to pay its debts as the debts become due, (3) make a  
14 general assignment for the benefit of its creditors, (4) commence a voluntary case under the  
15 United States Bankruptcy Code (as now or hereafter in effect), (5) file a petition seeking to take  
16 advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or  
17 composition or adjustment of debts, (6) fail to controvert in a timely and appropriate manner, or  
18 acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy  
19 Code, or (7) take any corporate action for the purpose of effecting any of the foregoing; or  
20

21 (g) without its application, approval or consent, a proceeding shall be  
22 commenced, in any court of competent jurisdiction, seeking in respect of the Borrower: the  
23 liquidation, reorganization, dissolution, winding-up, or composition or readjustment of debt, the  
24 appointment of a trustee, receiver, liquidator or the like of the Borrower or of all or any  
25 substantial part of the assets of the Borrower or other like relief in respect of the Borrower under  
26 any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or  
27 adjustment of debts unless such proceeding is contested in good faith by the Borrower; and, if  
28 the proceeding is being contested in good faith by the Borrower the same shall continue  
29 undismissed, or unstayed and in effect, for any period of ninety (90) consecutive days, or an  
30 order for relief against the Borrower shall be entered in any involuntary case under the  
31 Bankruptcy Code; or  
32

33 (h) there shall remain in force, undischarged, unsatisfied and unstayed, for  
34 more than thirty (30) days, whether or not consecutive, any final judgment against the Borrower  
35 that, with other then undischarged, unsatisfied and unstayed, outstanding final judgments against  
36 the Borrower exceeds in the aggregate [REDACTED] or  
37

38 (i) if any of the Loan Documents shall be canceled, terminated, revoked or  
39 rescinded by the Borrower otherwise than in accordance with the terms thereof or with the  
40 express prior written agreement, consent or approval of all Lenders, or any action at law, suit or  
41 in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents shall  
42 be commenced by or on behalf of the Borrower, any of its stockholders, or any court or any other  
43 Governmental Authority of competent jurisdiction shall make a determination that, or issue a  
44 judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is  
45 illegal, invalid or unenforceable in accordance with the terms thereof; or



(j) (i) with respect to any Guaranteed Pension Plan, (A) an ERISA Reportable Event shall have occurred; (B) an application for a minimum funding waiver shall have been filed; (C) a notice of intent to terminate such plan pursuant to Section 4041(a)(2) of ERISA shall have been issued; (D) a lien under Section 303(k) of ERISA shall be imposed; (E) the PBGC shall have instituted proceedings to terminate such plan; (F) the PBGC shall have applied to have a trustee appointed to administer such plan pursuant to Section 4042 of ERISA; or (G) any event or condition that constitutes grounds for the termination of, or the appointment of a trustee to administer, such plan pursuant to Section 4042 of ERISA shall have occurred or shall exist, provided that with respect to the event or condition described in Section 4042(a)(4) of ERISA, the PBGC shall have notified the Borrower or any ERISA Affiliate that it has made a determination that such plan should be terminated on such basis; or (ii) with respect to any Multiemployer Plan, the Borrower or any ERISA Affiliate shall incur liability as a result of a partial or complete withdrawal from such plan or the reorganization, insolvency or termination of such plan; and, in the case of each of (i) or (ii), the Majority Lenders shall have determined in their reasonable discretion that such events or conditions, individually or in the aggregate, reasonably could be expected likely to result in liability of the Borrower in an aggregate amount exceeding [REDACTED] or

(k) there shall occur any Change of Control; or

Section 7.02. Lenders' Remedies. Upon the occurrence of any Event of Default, for so long as same is continuing, the Agent shall, at the request of, or may, with the consent of, the Majority Lenders, by Notice to Borrower (an "Acceleration Notice"):

(i) declare all amounts owing with respect to this Agreement and all Notes, if any, as have been issued hereunder to be, and they, shall thereupon forthwith become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

provided that in the event of any Event of Default specified in Section 7.01(f) or Section 7.01(g), all amounts owing with respect to this Agreement and all Notes, if any, as have been issued hereunder, shall become immediately due and payable automatically and without any requirement of an Acceleration Notice from Agent or any Lender.

## ARTICLE 8 - SHARING.

Section 8.01. Sharing Among Lenders. If any Lender shall obtain from the Borrower any payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any other Loan Document through the exercise of any right of set-off, banker's lien or counterclaim or similar right or otherwise (other than from the Agent as provided herein and other than amounts owing to such Lender pursuant to Sections 3.05, 3.06, 3.08, 3.09 or Article 10), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder or thereunder by the Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders a participation in (or, if and to

1 the extent specified by such Lender, a direct interest in) the Loans or such other amounts,  
2 respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such  
3 amounts, and make such other adjustments from time to time as shall be equitable, to the end that  
4 all the Lenders shall share the benefit of such excess payment (net of any expenses that may be  
5 incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance  
6 with the unpaid principal of and/or interest on the Loans or such other amounts, respectively,  
7 owing to each of the Lenders; provided that, for the purpose of calculating any Lender's Pro Rata  
8 Share of any payment hereunder, payments to each such Lender shall include any amounts set  
9 off by the Borrower against such Lender pursuant to *Section 8.02*.

10  
11 **Section 8.02. Borrower's Offset Rights.** To the extent permitted by law, the Borrower  
12 may offset against any payments due to any Lender under this Agreement or the Notes the  
13 amounts of any loss suffered by the Borrower as a result of the failure of such Lender to return  
14 any monies of the Borrower on deposit with such Lender due to the insolvency of such Lender.  
15 Any such offset may be made only against payments due to the insolvent Lender, when and as  
16 the same become due, and no offsets may be made against any amounts due and payable to any  
17 other Lender. The Borrower may not exercise any right of setoff with respect to all or any  
18 portion of deposits which are insured by the Federal Deposit Insurance Corporation.

## 19 20 **ARTICLE 9 - AGENT.**

### 21 **THE AGENT**

22 **Section 9.01 Appointment and Authority.** Each of the Lenders hereby irrevocably  
23 appoints [REDACTED] to act on its behalf as the Agent hereunder and under the other Loan  
24 Documents and authorizes the Agent to take such actions on its behalf and to exercise such  
25 powers as are delegated to the Agent by the terms hereof or thereof, together with such actions  
26 and powers as are reasonably incidental thereto. The provisions of this *Article 9* are solely for  
27 the benefit of the Agent and the Lenders, and except as otherwise provided herein, the Borrower  
28 shall not have rights as a third-party beneficiary of any of such provisions. It is understood and  
29 agreed that the use of the term "**Agent**" herein or in any other Loan Documents (or any other  
30 similar term) with reference to the Agent is not intended to connote any fiduciary or other  
31 implied (or express) obligations arising under agency doctrine of any applicable law. Instead  
32 such term is used as a matter of market custom, and is intended to create or reflect only an  
33 administrative relationship between contracting parties.

34  
35 **Section 9.02 Rights as a Lender.** The Person serving as the Agent hereunder shall  
36 have the same rights and powers when acting in its capacity as a Lender as any other Lender, and  
37 may exercise such rights and powers as though it were not the Agent, and the term "**Lender**" and  
38 "**Lenders**" shall, unless otherwise expressly indicated or unless the context otherwise requires,  
39 include the Person serving as the Agent hereunder in its individual capacity. Such Person and its  
40 affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor  
41 or in any other advisory capacity for, and generally engage in any kind of business with, the  
42 Borrower or any Subsidiary or other affiliate thereof as if such Person were not the Agent  
43 hereunder and without any duty to account therefor to Lenders.

1           **Section 9.03   Exculpatory Provisions.**  
2

3           (a)     The duties and obligations of the Agent are only as expressly set forth  
4 herein and in the other Loan Documents, and its duties hereunder shall be administrative in  
5 nature. Without limiting the generality of the foregoing, the Agent:  
6

7                   (i)     shall not be subject to any fiduciary or other implied duties,  
8 regardless of whether a Default has occurred and is continuing;  
9

10                  (ii)    shall not have any duty to take any discretionary action or exercise  
11 any discretionary powers, except discretionary rights and powers expressly contemplated  
12 hereby or by the other Loan Documents that the Agent is required to exercise as directed  
13 in writing by the Majority Lenders (or such other number or percentage of Lenders as  
14 shall be expressly provided for herein or in the other Loan Documents); *provided* that the  
15 Agent shall not be required to take any action that, in its opinion or the opinion of its  
16 counsel, may expose the Agent to liability or that is contrary to any Loan Document or  
17 applicable law, including for the avoidance of doubt any action that may be in violation  
18 of the automatic stay under any Insolvency Proceedings or that may effect a forfeiture,  
19 modification or termination of property of a Defaulting Lender in violation of any  
20 Insolvency Proceedings; and  
21

22                  (iii)   shall not, except as expressly set forth herein and in the other Loan  
23 Documents, have any duty to disclose, and shall not be liable for the failure to disclose,  
24 any information relating to the Borrower or any of the Borrower's affiliates that is  
25 communicated to or obtained by the Person serving as the Agent or any of its affiliates in  
26 any capacity.  
27

28           (b)     The Agent shall not be liable for any action taken or not taken by it  
29 (i) with the consent or at the request of the Majority Lenders (or such other number or percentage  
30 of Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary,  
31 under the circumstances as provided in Section 7.02 and Section 10.01), or (ii) in the absence of  
32 its own gross negligence or willful misconduct. The Agent shall be deemed not to have  
33 knowledge of any Default unless and until Notice describing such Default is given to the Agent  
34 by the Borrower, a Lender.  
35

36           (c)     The Agent shall not be responsible for or have any duty to ascertain or  
37 inquire into (i) any statement, warranty or representation made in or in connection with this  
38 Agreement or any other Loan Document, (ii) the contents of any certificate, report or other  
39 document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the  
40 performance or observance of any of the covenants, agreements or other terms or conditions set  
41 forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability,  
42 effectiveness or genuineness of this Agreement, any other Loan Document or any other  
43 agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 6  
44 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to  
45 the Agent.

1       **Section 9.04 Reliance by the Agent.** The Agent shall be entitled to rely upon, and  
2 shall not incur any liability for relying upon, any notice, request, certificate, consent, statement,  
3 instrument, document or other writing (including any electronic message, Internet or intranet  
4 website posting or other distribution) believed by it to be genuine and to have been signed, sent  
5 or otherwise authenticated by the proper Person. The Agent also may rely upon any statement  
6 made to it orally or by telephone and believed by it to have been made by the proper Person, and  
7 shall not incur any liability for relying thereon (*provided* that the foregoing is not intended to be  
8 construed or to operate in derogation of the Notice requirements in Section 10.02). In  
9 determining compliance with any condition hereunder to the making of a Loan that by its terms  
10 must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is  
11 satisfactory to such Lender unless the Agent shall have received notice to the contrary from such  
12 Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may  
13 be counsel for the Borrower), independent accountants and other experts selected by it, and shall  
14 not be liable for any action taken or not taken by it in accordance with the advice of any such  
15 counsel, accountants or experts.

16  
17       **Section 9.05 Indemnification.** Lenders agree to indemnify the Agent (to the extent not  
18 reimbursed under Section 10.03 and Section 10.04, but without limiting the obligations of the  
19 Borrower under said Sections, and ratably in accordance with its respective Commitment) for  
20 any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs,  
21 expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred  
22 by or asserted (including by any Lender) against the Agent arising out of or by reason of any  
23 investigation in or in any way relating to or arising out of this Agreement or any other Loan  
24 Document or any other documents contemplated by or referred to herein or therein or the  
25 transactions contemplated hereby or thereby (including, without limitation, the costs and  
26 expenses that the Borrower is obligated to pay under Section 10.03 and Section 10.04 but  
27 excluding, unless a Default has occurred and is continuing, normal administrative costs and  
28 expenses incident to the performance of its agency duties hereunder) or the enforcement of any  
29 of the terms hereof or thereof or of any such other documents, *provided* that no Lender shall be  
30 liable for any of the foregoing to the extent they arise from the gross negligence or willful  
31 misconduct of the party to be indemnified as determined in a final nonappealable judgment by a  
32 court of competent jurisdiction.

33  
34       **Section 9.06 Delegation of Duties.** The Agent may perform any and all of its duties  
35 and exercise its rights and powers hereunder or under any other Loan Document by or through  
36 any one or more sub-agents appointed by the Agent. The exculpatory provisions of this Article  
37 shall apply to the Agent's activities as the Agent, and also shall apply to the activities any such  
38 sub-agent permitted herein. The Agent shall not be responsible for the negligence or misconduct  
39 of any sub-agent except to the extent that such sub-agent acted with gross negligence or willful  
40 misconduct.

41  
42       **Section 9.07 Resignation or Removal of the Agent.**  
43

44       (a) The Agent may at any time give Notice of its resignation to the Lenders  
45 and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall  
46 have the right, in consultation with the Borrower, and, so long as no Default is continuing,  
47 subject to the consent of the Borrower, to appoint a successor, which shall be a bank with an

1 office in the United States, or an affiliate thereof with an office in the United States. If no such  
2 successor shall have been so appointed by the Majority Lenders and shall have accepted such  
3 appointment within thirty (30) days after the retiring Agent gives Notice of its resignation (or  
4 such earlier day as shall be agreed by the Majority Lenders) (the “**Resignation Effective Date**”),  
5 then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, in  
6 consultation with the Borrower, and, so long as no Default is continuing, subject to the consent  
7 of the Borrower, appoint a successor Agent meeting the qualifications set forth above. Whether  
8 or not a successor has been appointed, such resignation shall become effective in accordance  
9 with such Notice on the Resignation Effective Date.

10  
11 (b) If the Person serving as the Agent is a Defaulting Lender pursuant to  
12 clause (d) of the definition thereof, the Majority Lenders may, to the extent permitted by  
13 applicable law, by Notice to the Borrower and such Person remove such Person as the Agent  
14 and, in consultation with the Borrower, and, so long as no Default is continuing, subject to the  
15 consent of the Borrower, appoint a successor, which successor Agent shall be a Lender and  
16 maintain an office in the United States. If no such successor shall have been so appointed by the  
17 Majority Lenders and shall have accepted such appointment within 30 days (or such earlier day  
18 as shall be agreed by the Majority Lenders) (the “**Removal Effective Date**”), then such removal  
19 shall nonetheless become effective in accordance with such Notice on the Removal Effective  
20 Date.

21  
22 (c) With effect from the Resignation Effective Date or the Removal Effective  
23 Date (as applicable): (1) the retiring or removed Agent shall be discharged from its duties and  
24 obligations hereunder and under the other Loan Documents (except that, in the event any  
25 collateral security is then being held by the Agent on behalf of the Lenders under any of the Loan  
26 Documents, the retiring or removed Agent shall continue to hold such collateral security until  
27 such time as a successor Agent is appointed); and (2) except for any indemnity payments owed  
28 to the retiring or removed Agent, all payments, communications and determinations provided to  
29 be made by, to or through the Agent shall instead be made by or to each of the Lenders directly,  
30 until such time, if any, as the Majority Lenders appoint a successor Agent as provided for in this  
31 Section 9.07. Upon the acceptance by a successor of such appointment for it to act as successor  
32 Agent hereunder, such successor shall succeed to and become vested with all of the rights,  
33 powers, privileges and duties of the retiring or removed Agent (other than any rights to  
34 indemnity payments owed to the retiring or removed Agent), and the retiring or removed Agent  
35 shall, except as provided above, be discharged from all of its duties and obligations hereunder or  
36 under the other Loan Documents (*provided* that the foregoing shall not relieve the retiring or  
37 removed Agent from any liability for its gross negligence or willful misconduct hereunder). The  
38 fees payable by the Borrower to a successor Agent shall be the same as those payable to the  
39 predecessor Agent unless otherwise agreed between the Borrower and such successor Agent.  
40 After the retiring or removed Agent’s resignation or removal hereunder and under the other Loan  
41 Documents, the provisions of this Article 9 and Section 10.03 and Section 10.04 shall continue in  
42 effect for the benefit of such retiring or removed Agent and its sub-agents in respect of any  
43 actions taken or omitted to be taken by any of them while the retiring or removed Agent was  
44 acting as the Agent hereunder.

45  
46 **Section 9.08 Non-Reliance on the Agent and Other Lenders.** Each of the Lenders  
47 acknowledges that it has, independently and without reliance upon the Agent or any other Lender



1 or any of their Related Parties and based on such documents and information as it has deemed  
2 appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the  
3 Lenders also acknowledges that it will, independently and without reliance upon the Agent or  
4 any other Lender or any of their Related Parties, and based on such documents and information  
5 as it shall from time to time deem appropriate, continue to make its own decisions in taking or  
6 not taking action under or based upon this Agreement, any other Loan Document or any related  
7 agreement or any document furnished hereunder or thereunder.  
8

9 **Section 9.09 No Other Duties, etc.** Anything herein to the contrary notwithstanding,  
10 none of the Arrangers or Bookrunners listed on the cover page hereof shall have any powers,  
11 duties or responsibilities under this Agreement or any of the other Loan Documents, except in its  
12 capacity, as applicable, as the Agent or a Lender hereunder.  
13

14 **Section 9.10 Lender ERISA Matters.** (a) Each of the Lenders (x) represents and  
15 warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from  
16 the date such Person became a Lender party hereto to the date such Person ceases being a Lender  
17 party hereto, for the benefit of, the Agent and its respective affiliates, and not, for the avoidance  
18 of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be  
19 true:  
20

21 (i) such Lender is not using “plan assets” (within the meaning of  
22 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such  
23 Lender’s entrance into, participation in, administration of and performance of, the Loans,  
24 the commitments or this Agreement,  
25

26 (ii) the transaction exemption set forth in one or more PTEs, such as  
27 PTE 84-14 (a class exemption for certain transactions determined by independent  
28 qualified professional asset managers), PTE 95-60 (a class exemption for certain  
29 transactions involving insurance company general accounts), PTE 90-1 (a class  
30 exemption for certain transactions involving insurance company pooled separate  
31 accounts), PTE 91-38 (a class exemption for certain transactions involving bank  
32 collective investment funds) or PTE 96-23 (a class exemption for certain transactions  
33 determined by in-house asset managers), is applicable with respect to such Lender’s  
34 entrance into, participation in, administration of and performance of the Loans, the  
35 Commitments and this Agreement,  
36

37 (iii) (A) such Lender is an investment fund managed by a “Qualified  
38 Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such  
39 Qualified Professional Asset Manager made the investment decision on behalf of such  
40 Lender to enter into, participate in, administer and perform the Loans, the commitments  
41 and this Agreement, (C) the entrance into, participation in, administration of and  
42 performance of the Loans, the commitments and this Agreement satisfies the  
43 requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best  
44 knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are  
45 satisfied with respect to such Lender’s entrance into, participation in, administration of  
46 and performance of the Loans, the commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender,

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has not provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and its affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Agent or any of its affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Agent or any of its affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

As used in this Section:

**"Benefit Plan"** means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

**"PTE"** means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

## ARTICLE 10 - MISCELLANEOUS

Section 10.01. Consents, Amendments, Waivers, Etc. Except as otherwise provided in this Agreement, any consent or approval required or permitted by this Agreement to be given by one or more or all of the Lenders may be given, and any term of this Agreement or of any other instrument related hereto or mentioned herein may be amended, and the performance or observance by the Borrower of any terms of this Agreement or such other instrument or the continuance of any Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Borrower and the written consent of the Majority Lenders. Notwithstanding the foregoing, (a) the rate of interest on and the term of the Loans, the Maturity Date, the principal amount of the Loans owing to each Lender, the dates on which interest is required to be paid hereunder, the amount and dates of payment of the fees or principal owing each Lender hereunder may not be changed, the amount of any Lender's commitment hereunder may not be increased and the tenor of such Lender's obligations hereunder may not be extended, in any such case without the written consent of Borrower and the written consent of each Lender affected thereby; (b) Article 9, this Section 10.01, the definition of Majority Lenders, the definition of Pro Rata Share and any provision of the Loan Documents that requires action by all of the Lenders may not be amended without the written consent of all of the Lenders and (c) Article 9 may not be amended without the written

1 consent of the Agent. No waiver shall extend to or affect any obligation not expressly waived or  
2 impair any right consequent thereon. No course of dealing or delay or omission on the part of  
3 the Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be  
4 prejudicial thereto. No notice to or demand upon the Borrower shall entitle the Borrower to  
5 other or further notice or demand in similar or other circumstances.  
6

7 Section 10.02. Notices. Except as otherwise expressly provided in this Agreement, all  
8 notices, demands, consents, waivers, elections, approvals, requests, and similar communications  
9 required or permitted to be provided in connection with this Agreement (any of the foregoing  
10 being referred to as a "Notice") shall be set forth in writing and shall be given by registered or  
11 certified mail (return receipt requested) or by recognized nationwide courier service (with  
12 signature required to evidence receipt), and shall be deemed received by the addressee Party  
13 when delivered during normal business hours to such Party's address as shown below (or such  
14 other address as that Party may specify from time to time in written Notice given pursuant hereto  
15 not less than thirty (30) days prior to the date that the new address is intended to become  
16 effective); provided that (x) any Notice delivered in accordance with *Article 2* or *Article 3* may  
17 be delivered by facsimile or other specified electronic delivery system acceptable to the Agent  
18 and the Borrower, and (y) any Notice delivered to the appropriate address for the receiving Party  
19 at any time other than during normal business hours will be deemed to be given and received by  
20 the receiving Party on the next Business Day thereafter:  
21

22 (a) if to the Borrower, at 700 Universe Boulevard, Juno Beach, Florida 33408  
23 8801, Attention: Treasurer (and for purposes of Notices which can be provided, or confirmed  
24 telephonically or by facsimile as specified in Article 2 or Article 3, Telephone No. (561) 694-  
25 6204, Facsimile No. (561) 694-3707), or at such other Notice address as the Borrower shall last  
26 have furnished in writing to the Agent in accordance with this *Section 10.02*;  
27

28  
29 (b) if to the Agent, at [REDACTED],  
30 [REDACTED] or such other Notice address as the Agent shall last have furnished in writing to the  
31 Person giving the notice;  
32

33 (c) if to a Lender, at the Notice address specified in *Schedule I*, or such other  
34 Notice address as the Lender shall last have furnished in writing to the Agent and the Borrower  
35 in accordance with this *Section 10.02*.  
36

37 Section 10.03. Expenses. The Borrower agrees to pay promptly following receipt of  
38 written invoices describing in reasonable detail (a) the reasonable fees, expenses and  
39 disbursements of the Agent's external counsel incurred in connection with the administration or  
40 interpretation of the Loan Documents and other instruments mentioned herein, the negotiation of  
41 this Agreement and the closing hereunder, and amendments, modifications, approvals, consents  
42 or waivers hereto or hereunder, (b) the reasonable fees, expenses and disbursements of the Agent  
43 in connection with the administration or interpretation of the Loan Documents and other  
44 instruments mentioned herein, and (c) all reasonable out of pocket expenses including reasonable  
45 external attorneys' fees and costs incurred by the Agent or any Lender (provided that the  
46 Borrower shall only be responsible for the reasonable fees and expenses of one counsel engaged  
47 to represent all such Parties taken as a whole, unless any actual or potential conflict of interest  
48

1 between such Parties makes it inappropriate for one counsel to represent all such Parties, in  
2 which event the Borrower shall be responsible for the reasonable fees and expenses of one  
3 additional counsel for each group of affected Parties similarly situated taken as a whole) in  
4 connection with (i) the enforcement of or preservation of rights under any of the Loan  
5 Documents against the Borrower or the administration thereof after the occurrence of a Default,  
6 (ii) defending against any action brought by the Borrower or its affiliates against the Agent or  
7 any Lender arising under or relating to any of the Loan Documents unless the Borrower or its  
8 affiliates are the prevailing party in such action, and (iii) any litigation, proceeding or dispute  
9 brought by such Lender or the Agent against the Borrower (whether arising hereunder or  
10 otherwise in connection with the transactions contemplated hereby) in which such Lender or the  
11 Agent is the prevailing party (but without derogation to the provisions of *Section 10.04*). The  
12 covenants of this *Section 10.03* shall survive payment or satisfaction of payments of amounts  
13 owing with respect to any Notes as may be issued hereunder.  
14

15       Section 10.04. Indemnification. The Borrower agrees to indemnify and hold harmless  
16 the Agent, the Lenders and their Related Parties (each, an “Indemnitee”) from and against any  
17 and all claims, actions and suits by a third party (which third party may, for these purposes,  
18 include the Agent or a Lender (collectively, “Actions”), whether groundless or otherwise, and  
19 from and against any and all liabilities, losses, damages and expenses payable by any Indemnitee  
20 to any third party (which third party may, for these purposes, include the Agent or a Lender)  
21 (collectively, “Liabilities”) of every nature and character incurred by or awarded against any  
22 such Indemnitee (including the reasonable fees and expenses of counsel), in each case arising out  
23 of this Agreement or any of the other Loan Documents or the transactions contemplated hereby  
24 including, without limitation, (a) any actual or proposed use by the Borrower of the proceeds of  
25 the Loans, or (b) the Borrower entering into or performing this Agreement or any of the other  
26 Loan Documents; provided that the liabilities, losses, damages and expenses indemnified  
27 pursuant to this *Section 10.04* shall not include any liabilities, losses, damages and expenses in  
28 respect of any taxes, levies, imposts, deductions, charges or withholdings, indemnification for  
29 which is provided on the basis, and to the extent, specified in *Section 3.09*; and provided further,  
30 that such indemnity shall not be available as to any Indemnitee, to the extent that such liabilities,  
31 losses, damages and expenses arise out of the gross negligence, bad faith or willful misconduct  
32 of such Indemnitee or any of its Related Parties as determined in a final nonappealable judgment  
33 by a court of competent jurisdiction. In the event that any Indemnitee shall become subject to  
34 any Action or Liability with respect to any matter for which indemnification may apply pursuant  
35 to this *Section 10.04* (an “Indemnity Claim”), such Indemnitee shall give Notice of such  
36 Indemnity Claim to the Borrower by telephone at (561) 694 6204 and also in accordance with the  
37 written Notice requirements in *Section 10.02*. Such Indemnitee may retain counsel and conduct  
38 the defense of such Indemnity Claim, as it may in its sole discretion deem proper, at the sole cost  
39 and expense of the Borrower. So long as no Default shall have occurred and be continuing  
40 hereunder, no Indemnitee shall compromise or settle any claim without the prior written consent  
41 of the Borrower, which consent shall not unreasonably be withheld or delayed (provided that the  
42 Borrower shall only be responsible for the reasonable fees and expenses of one counsel for all  
43 Indemnitees taken as a whole unless any actual or potential conflict of interest between such  
44 Indemnitees makes it inappropriate for one counsel to represent all such Indemnitees, in which  
45 event the Borrower shall be responsible for the reasonable fees and expenses of one additional  
46 counsel for each group of affected Indemnitees similarly situated taken as a whole). If, and to  
47 the extent that the obligations of the Borrower under this *Section 10.04* are unenforceable for any  
48

1 reason, the Bonower hereby agrees to make the maximum contribution to the payment in  
2 satisfaction of such obligations which is permissible under applicable law. In the case of an  
3 investigation, litigation or other proceeding to which the indemnity in this *Section 10.04* applies,  
4 such indemnity shall be effective whether or not the affected Indemnatee is a party thereto and  
5 whether or not the transactions contemplated hereby are consummated. The Parties agree not to  
6 assert any claim against any other Party or any of its affiliates, or any of its directors, officers,  
7 employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or  
8 punitive damages arising out of or otherwise relating to this Agreement, any other Loan  
9 Document, any of the transactions contemplated herein or the actual or proposed use of the  
10 proceeds of the Loans (provided that the foregoing shall not preclude any Indemnatee from  
11 seeking to recover the preceding types of damages from the Bonower to the extent the same are  
12 specifically payable by such Indemnatee to any third party).

13  
14 *Section 10.05. Survival of Covenants.* All covenants, agreements representations and  
15 warranties made herein, in the Notes, in any of the other Loan Documents or in any documents  
16 or other papers delivered by or on behalf of the Bonower pursuant hereto shall be deemed to  
17 have been relied upon by the Agent and the Lenders, notwithstanding any investigation  
18 heretofore or hereafter made by any of them, and shall survive the making by the Lenders of the  
19 Loans, as herein contemplated, and shall continue in full force and effect so long as any amount  
20 due under this Agreement, the Notes, or any of the other Loan Documents remains outstanding.  
21 All statements contained in any certificate or other paper delivered to the Agent or any Lender at  
22 any time by or on behalf of the Bonower pursuant hereto or in connection with the transactions  
23 contemplated hereby shall constitute representations and Warranties by the Bonower hereunder.

24  
25  
26  
27  
28  
29 *Section 10.06. Assignment and Participations.*

30  
31 (a) *Successors and Assigns Generally.* The provisions of this Agreement  
32 shall be binding upon and inure to the benefit of the Parties and their respective successors and  
33 assigns permitted hereby, except that the Bonower may not assign or otherwise transfer any of  
34 its rights or obligations hereunder without the prior written consent of the Agent and each of the  
35 Lenders, and no Lender may assign or otherwise transfer any of its rights or obligations  
36 hereunder except (i) to an assignee in accordance with the provisions of *Section 10.06(b)* or  
37 *Section 10.06(c)*. (ii) by way of participation in accordance with the provisions of  
38 *Section 10.06(d)*. or (iii) by way of pledge or assignment of a security interest subject to the  
39 restrictions of *Section 10.06(e)* (and any other attempted assignment or transfer by any Party  
40 shall be null and void). Other than as specified in *Section 10.08* and *Section 10.04*, nothing in this  
41 Agreement, expressed or implied, shall be construed to confer upon any Person (other than the  
42 Parties, their respective successors and assigns permitted hereby, and Participants to the extent  
43 provided in *Section 10.06(d)*) any legal or equitable right, remedy or claim under or by reason of  
44 this Agreement.

45  
46 (b) *Assignments by Lenders.* Any Lender may at any time assign to one or  
47 more assignees all or a portion of its rights and obligations under this Agreement (including all



1 or a portion of its commitment and the Loans at the time owing to it); *provided* that any such  
2 assignment shall be subject to the following conditions:

3  
4 (i) *Minimum Amounts.*

5  
6 (A) in the case of an assignment of the entire remaining amount  
7 of the assigning Lender's commitment and/or the Loans at  
8 the time owing to it, no minimum amount need be  
9 assigned; and

10  
11 (B) in any case not described in Section 10.06(b)(i)(A), the  
12 principal outstanding balance of the Loans of the assigning  
13 Lender subject to each such assignment (determined as of  
14 the date the Assignment and Assumption Agreement made  
15 pursuant to an Assignment and Assumption Agreement in  
16 the form of Exhibit E hereto (the "**Assignment and**  
17 **Assumption Agreement**") with respect to such assignment  
18 is delivered to the Agent or, if "**Trade Date**" is specified in  
19 the Assignment and Assumption Agreement, as of the  
20 Trade Date) shall not be less than [REDACTED]  
21 [REDACTED], unless each of the Agent and, so long as no  
22 Event of Default has occurred and is continuing, the  
23 Borrower otherwise consents.  
24

25 (ii) *Proportionate Amounts.* Each partial assignment shall be made as  
26 an assignment of a proportionate part of all the assigning Lender's rights and obligations  
27 under this Agreement with respect to the Loan assigned.  
28

29 (iii) *Required Consents.* No consent shall be required for any  
30 assignment except to the extent required by Section 10.06(b)(i)(B) and, in addition:  
31

32 (A) the consent of the Borrower (such consent not to be  
33 unreasonably withheld or delayed) shall be required unless  
34 (x) an Event of Default has occurred and is continuing at  
35 the time of such assignment, or (y) such assignment is to an  
36 Initial Lender that has been an Initial Lender from and  
37 since the Effective Date or is an affiliate of such an Initial  
38 Lender which is majority-owned and controlled by such  
39 Initial Lender or any corporation controlling such Initial  
40 Lender; and

41  
42 (B) the consent of the Agent (such consent not to be  
43 unreasonably withheld or delayed) shall be required for  
44 assignments in respect of the Loans and/or commitments if  
45 such assignment is to a Person that is not a Lender or an  
46 affiliate of such Lender which is majority-owned and

1 controlled by such Lender or any corporation controlling  
2 such Lender.  
3

4 (iv) *Assignment and Assumption Agreement.* The parties to each  
5 assignment shall execute and deliver to the Agent an Assignment and Assumption  
6 Agreement, together with a processing and recordation fee of [REDACTED] provided that  
7 the Agent may, in its sole discretion, elect to waive such processing and recordation fee  
8 in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the  
9 Agent an Administrative Questionnaire.  
10

11 (v) *No Assignment to Certain Persons.* No such assignment shall be  
12 made to (A) the Borrower or any of the Borrower's affiliates or Subsidiaries or (B) to any  
13 Defaulting Lender or any of its affiliates or Subsidiaries, or any Person who, upon  
14 becoming a Lender hereunder, would constitute any of the foregoing Persons described in  
15 this clause (B).  
16

17 (vi) *No Assignment to Natural Persons.* No such assignment shall be  
18 made to a natural Person.  
19

20 (vii) *Certain Additional Payments.* In connection with any assignment  
21 of rights and obligations of any Defaulting Lender hereunder, no such assignment shall  
22 be effective unless and until, in addition to the other conditions thereto set forth herein,  
23 the Defaulting Lender or its assignee shall make such additional payments to the Agent in  
24 an aggregate amount sufficient, upon distribution thereof as appropriate (which may be  
25 outright payment, purchases by the assignee of participations, or other compensating  
26 actions, including funding, with the consent of the Borrower and the Agent, the  
27 applicable pro rata share of Loans previously requested but not funded by the Defaulting  
28 Lender, to each of which the applicable assignee and assignor hereby irrevocably  
29 consent), to (x) pay and satisfy in full all payment liabilities then owed by such  
30 Defaulting Lender to the Agent and each other Lender hereunder (and interest accrued  
31 thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in  
32 accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any  
33 assignment of rights and obligations of any Defaulting Lender hereunder shall become  
34 effective under applicable law without compliance with the provisions of this paragraph,  
35 then the assignee of such interest shall be deemed to be a Defaulting Lender for all  
36 purposes of this Agreement until such compliance occurs.  
37

38 Subject to acceptance and recording thereof by the Agent pursuant to Section 10.06(c),  
39 from and after the effective date specified in each Assignment and Assumption  
40 Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent  
41 of the interest assigned by such Assignment and Assumption Agreement, shall have the  
42 rights and obligations of (as applicable) a Lender under this Agreement, and the assigning  
43 Lender thereunder shall, to the extent of the interest assigned by such Assignment and  
44 Assumption Agreement, be released from its obligations under this Agreement (and, in  
45 the case of an Assignment and Assumption Agreement covering all of the assigning  
46 Lender's rights and obligations under this Agreement, such Lender shall cease to be a  
47 Party hereto) but (i) shall continue to be entitled to the benefits of Article 3, Section 9.05,

Section 10.03 and Section 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment, and (ii) shall continue to be obligated in respect of any liabilities or obligations that expressly survive any such assignment; *provided*, that except to the extent otherwise expressly agreed by each affected Party no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any Party hereunder arising from the assigning Lender having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d). The Agent agrees to promptly notify the Borrower of each assignment or transfer by a Lender of rights or obligations under this Agreement.

(c) Register. The Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of Lenders, and the commitments of, and principal amounts (and stated interest) of the Loans owing to, each of the Lenders pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Except as registered in accordance with this Section 10.06(c), the Borrower shall not be obligated to recognize or treat any assignee of any interest or with respect to the commitments or any Loans as a Lender or Person otherwise entitled to assert, enforce or otherwise participate in any rights or benefits with respect thereto or hereunder.

(d) Participations. A Lender may sell or agree to sell to one or more other Persons (other than the Borrower or any of its Affiliates) a participation in all or any part of any Loans held by it, or in its Commitment, *provided* that no purchaser of a participation (a “**Participant**”) shall have any rights or benefits under this Agreement or any Note (the Participant’s rights against such Lender in respect of such participation to be those set forth the agreements executed by such Lender in favor of the Participant). All amounts payable by the Borrower to any Lender in respect of Loans held by it, and its Commitment, shall be determined as if such Lender had not sold or agreed to sell any participation in such Loans and Commitment, and as if such Lender were funding each of such Loan and Commitment in the same way that it is funding the portion of such Loan and Commitment in which no participation has been sold. In no event shall a Lender that sells a participation agree with the Participant to take or refrain from taking any action hereunder or under any other Loan Document except that such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase or extend the term, or extend the time or waive any requirement for the reduction or termination of such Lender’s related Commitment, (ii) extend the date fixed for the payment of principal or interest on the related Loan or Loans, or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, (iv) reduce the rate at which interest is payable thereon, or any fee hereunder payable to the Participant, to a level below the rate at which the Participant is entitled to participate in such interest or fee, (v) alter the rights or obligations of the Borrower to repay the related Loans, or (vi) consent to any

1 modification, supplement or waiver hereof to the extent that the same, under Section 10.01,  
2 requires the consent of each of the Lenders. Each of the Lenders that sells a participation shall,  
3 acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on  
4 which it enters the name and address of each Participant and the principal amounts (and stated  
5 interest) of each Participant's interest in the Loans or other obligations under the Loan  
6 Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to  
7 disclose all or any portion of the Participant Register (including the identity of any Participant or  
8 any information relating to a Participant's interest in any commitments, loans, letters of credit or  
9 its other obligations under any Loan Document) to any Person except to the extent that such  
10 disclosure is necessary to establish that such commitment, loan, letter of credit or other  
11 obligation is in registered form under Section 5f.103-1(c) of the United States Treasury  
12 Regulations. The entries in the Participant Register shall be conclusive absent manifest error,  
13 and such Lender shall treat each Person whose name is recorded in the Participant Register as the  
14 owner of such participation for all purposes of this Agreement notwithstanding any notice to the  
15 contrary. For the avoidance of doubt, the Agent (in its capacity as the Agent) shall have no  
16 responsibility for maintaining a Participant Register.  
17

18 (e) Certain Pledges. Any Lender may at any time pledge or assign a security  
19 interest in all or any portion of its rights under this Agreement to secure obligations of such  
20 Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank;  
21 *provided* that no such pledge or assignment shall release such Lender from any of its obligations  
22 hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.  
23

24 (f) Disclosure. The Borrower agrees that any Lender may disclose  
25 information obtained by such Lender pursuant to this Agreement to assignees, participants or  
26 counterparties to any swap or derivative transaction relating to the transactions contemplated  
27 pursuant to this Agreement and potential assignees or participants hereunder or counterparties as  
28 aforesaid; *provided* that such assignees, participants or counterparties or potential assignees,  
29 participants or counterparties shall agree (i) to preserve the confidentiality of such information  
30 pursuant to a confidentiality agreement that provides for the same terms set forth in  
31 Section 10.07, (ii) not to disclose such information to a third party, and (iii) not to make use of  
32 such information for purposes of transactions unrelated to such contemplated assignment or  
33 participation.  
34

35 Section 10.07. Confidentiality. The Agent and each Lender agrees to hold any  
36 confidential information that it may receive from the Borrower or any of its Subsidiaries  
37 pursuant to this Agreement or any of the Loan Documents or in connection with any transaction  
38 contemplated herein or therein in confidence except for disclosure: (a) to its affiliates, officers,  
39 directors, employees, consultants, advisors, attorneys, accountants, auditors and other agents  
40 deemed reasonably necessary to effectuate the transaction contemplated herein or therein;  
41 provided that such parties shall be advised of the requirement to maintain the confidentiality of  
42 such information and the Agent or Lender, as the case may be, shall be responsible for any such  
43 party's breach of such confidentiality agreement; (b) to regulatory officials having jurisdiction  
44 over the Agent or such Lender, or financial regulatory bodies claiming oversight over the Agent  
45 or such Lender; (c) as required by applicable law or legal process (provided that in the event the  
46 Agent or any Lender is so required to disclose any such confidential information, the Agent or  
47 any such Lender shall endeavor to notify promptly the Borrower so that the Borrower may seek a  
48

1 protective order or other appropriate remedy if not prohibited by law and if practicable to do  
2 under the circumstances); (d) to any assignee or participant or any potential assignee or  
3 participant, provided that such parties shall be advised of the requirement to maintain the  
4 confidentiality of such information and shall agree to the provisions hereof; (e) in connection  
5 with the exercise of any remedies hereunder or any suit, action or proceeding relating to this  
6 Agreement or the enforcement of rights hereunder and (f) subject to an agreement containing  
7 provisions substantially the same as those of this Section, to any direct or indirect contractual  
8 counterparty or prospective counterparty (or such contractual counterparty's or prospective  
9 counterparty's professional advisor) to any credit derivative transaction relating to obligations of  
10 the Borrower. For purposes of this Agreement (x) the term "confidential information" means all  
11 information respecting the Borrower and its Subsidiaries, or any of them, other than (i)  
12 information previously filed with any governmental or quasi governmental agency, authority,  
13 board, bureau, commission, department, instrumentality or public body or which is otherwise  
14 available to the public, (ii) information which is delivered by the Borrower to the Agent or any  
15 Lender that it expressly identifies as non confidential, (iii) information previously published in  
16 any public medium from a source other than, directly or indirectly, the Agent or any Lender, and  
17 (iv) information which is received by the Agent or any Lender from any third party which the  
18 Agent or such Lender reasonably believes, after due inquiry, was not and is not, violating any  
19 obligation of confidentiality to the Borrower and (y) "affiliate" means, with respect to any  
20 Lender any Person which is majority-owned and controlled by such Lender or any corporation  
21 controlling such Lender.  
22

23 Section 10.08. Governing Law; Jurisdiction. THIS AGREEMENT AND EACH OF  
24 THE OTHER LOAN DOCUMENTS, EXCEPT AS OTHERWISE SPECIFICALLY  
25 PROVIDED THEREIN, ARE CONTRACTS UNDER THE LAWS OF THE STATE OF NEW  
26 YORK AND SHALL FOR ALL PURPOSES BE CONSTRUED IN ACCORDANCE WITH  
27 AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD  
28 TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER (OTHER THAN §5-1401  
29 OF THE NEW YORK GENERAL OBLIGATIONS LAW). THE PARTIES AGREE THAT  
30 ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT OR ANY OF THE OTHER  
31 LOAN DOCUMENTS SHALL ONLY BE BROUGHT IN THE COURTS OF THE STATE  
32 AND COUNTY OF NEW YORK OR ANY FEDERAL COURT SITTING IN THE BOROUGH  
33 OF MANHATTAN, NEW YORK, AND CONSENT TO THE EXCLUSIVE JURISDICTION  
34 OF SUCH COURTS AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING  
35 MADE UPON THE RELEVANT PARTIES BY MAIL AT THEIR RESPECTIVE  
36 ADDRESSES IN ACCORDANCE WITH SECTION 10.02. EACH PARTY HEREBY  
37 WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE  
38 VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS  
39 BROUGHT IN AN INCONVENIENT FORUM  
40

41 Section 10.09. Headings. The captions in this Agreement are for convenience of  
42 reference only and shall not define or limit the provisions hereof.  
43

44 Section 10.10. Counterparts. This Agreement and any amendment hereof may be  
45 executed in several counterparts and by each Party on a separate counterpart, each of which  
46 when so executed and delivered shall be an original, and all of which together shall constitute  
47 one instrument. In proving this Agreement it shall not be necessary to produce or account for  
48



1 more than one such counterpart signed by the Party against whom enforcement is sought.  
2 Delivery of an executed counterpart of a signature page to this Agreement by telecopy  
3 transmission or by emailing a pdf file shall be effective as delivery of a manually executed  
4 counterpart of this Agreement.  
5

6 Section 10.11. Entire Agreement. The Loan Documents and any other documents  
7 executed in connection herewith or therewith express the entire understanding of the Parties with  
8 respect to the transactions contemplated hereby. Neither this Agreement nor any term hereof  
9 may be changed, waived, discharged or terminated, except as provided in *Section 10.01*.  
10

11 Section 10.12. Severability. The provisions of this Agreement are severable and if any  
12 one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any  
13 jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or  
14 part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in  
15 any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.  
16

17 Section 10.13. Third Party Beneficiaries. None of the provisions of this Agreement shall  
18 operate or are intended to operate for the benefit of, any Person other than the Parties hereto, and  
19 no other Person shall have any rights under or with respect hereto (except to the limited extent  
20 expressly provided for with respect to any Indemnatee under *Section 10.04*).  
21

22 Section 10.14. USA Patriot Act Notice. The Agent (for itself and not on behalf of any of  
23 the Lenders) and each Lender hereby notifies the Borrower that pursuant to the requirements of  
24 the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"),  
25 it is required to obtain, verify and record information that identifies the Borrower, which  
26 information includes the name and address of the Borrower and other information that will allow  
27 the Agent and such Lender to identify the Borrower in accordance with the Act.  
28

29 Section 10.15. No Fiduciary Duties. The Borrower agrees that in connection with all  
30 aspects of the transactions contemplated hereby and any communications in connection  
31 therewith, the Borrower and its affiliates, on the one hand, and the Agent, the Lender and their  
32 respective affiliates, on the other hand, will have a business relationship that does not create, by  
33 implication or otherwise, any fiduciary duty on the part of the Agent, and the Lenders or their  
34 respective affiliates.  
35

36 Section 10.16. Electronic Records. The Borrower hereby acknowledges the receipt of a  
37 copy of this Agreement. The Agent and each Lender may, on behalf of the Borrower, create a  
38 microfilm or optical disk or other electronic image of this Agreement and may store the  
39 electronic image of this Agreement in its electronic form and then destroy the paper original as  
40 part of the Agent or any Lender's normal business practices, with the electronic image deemed to  
41 be an original.  
42

43 Section 10.17. WAIVER OF JURY TRIAL. THE BORROWER, THE AGENT AND  
44 EACH LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL  
45 WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN  
46 CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY OF THE OTHER LOAN  
47 DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR

1 THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. THE BORROWER (A)  
2 CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE AGENT OR  
3 ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE AGENT  
4 OR ANY LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE  
5 THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT THE AGENT AND EACH  
6 LENDER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER  
7 LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE WAIVER AND  
8 CERTIFICATIONS CONTAINED IN THIS SECTION 10.17.  
9

10 Section 10.18. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.  
11 Notwithstanding anything to the contrary in any Loan Document or any other agreement,  
12 arrangement or understanding among any such parties, each party hereto acknowledges that any  
13 liability of any EEA Financial Institution arising under any Loan Document, to the extent such  
14 liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA  
15 Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:  
16

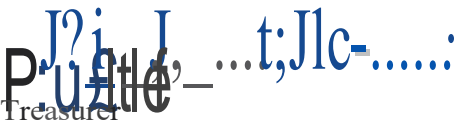
- 17 (a) the application of any Write-Down and Conversion Powers by an EEA Resolution  
18 Authority to any such liabilities arising hereunder which may be payable by it to any  
19 party hereto that is an EEA Financial Institution; and  
20
- 21 (b) the effects of any Bail-In Action on any such liability, including, if applicable:  
22
- 23 (i) a reduction in full or in part or cancellation of any such liability;  
24
- 25 (ii) a conversion of all, or a portion of, such liability into shares or other instruments  
26 of ownership in such EEA Financial Institution, its parent undertaking, or a bridge  
27 institution that may be issued to it or otherwise conferred on it, and that such  
28 shares or other instruments of ownership will be accepted by it in lieu of any  
29 rights with respect to any such liability under this Agreement or any other Loan  
30 Documents;  
31
- 32 (iii) the variation of the terms of such liability in connection with the exercise of the  
33 Write-Down and Conversion Powers of any EEA Resolution Authority.  
34

35  
36 **IN WITNESS WHEREOF**, the undersigned have duly executed this Agreement as a  
37 sealed instrument as of the date first set forth above.  
38  
39  
40  
41

42 [SIGNATURES APPEAR ON THE FOLLOWING PAGES]

1  
2  
3  
4  
5

**GULF POWER COMPANY**

By:   
6 P. Uffle  
7 Treasurer

[REDACTED], as Administrative Agent and Lender

[REDACTED]

STATE OF Ntw 'fwl )  
 ) SS.  
COUNTY OF t->r..>'fodr )

Personally appeared before me, the undersigned, a Notary Public in and for said County, N.t.."" lr'or le-, to me known and known to me, who, being by me first duly sworn, declared that he/she is a e..v-v-p\cs- of , that being duly authorized be/she did execute the foregoing instrument before me for the purposes set forth therein.

SS WHEREOF, I have hereto set my hand and official seal at this 30 day of S t, 2019.

[REDACTED]

My Commission Expires: <JV/ ()d'(J-6(r/

By: [REDACTED]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[REDACTED]

1  
2  
3  
4

**SCHEDULE I**  
**TO TERM LOAN AGREEMENT**  
**LENDER**

<div data-bbox="266 411 594 457"></div> <div data-bbox="363 485 959 554"><u>Lending Office and Address for Notices for all Loans:</u></div> <div data-bbox="362 625 701 745"></div>	<div data-bbox="1109 415 1323 451">\$300,000,000.00</div>
---	---

5



1 **SCHEDULE 4.03**  
2 **TO TERM LOAN AGREEMENT**

3 **PERMITTED LIENS**

- 4 1. Liens to secure taxes, assessments and other government charges or claims for labor,  
5 material or supplies in respect of obligations not overdue;  
6  
7 2. Deposits or pledges made in connection with, or to secure payment of, workmen's  
8 compensation, unemployment insurance, old age pensions or other social security  
9 obligations;  
10  
11 3. Liens of carriers, warehousemen, mechanics and materialmen, and other like liens, which  
12 liens do not individually or in the aggregate have a materially adverse effect on the  
13 business of the Borrower; and  
14  
15 4. Encumbrances consisting of easements, rights of way, zoning restrictions, restrictions on  
16 the use of real property and defects and irregularities in the title thereto, landlord's or  
17 lessor's liens under leases to which the Borrower or any of its Subsidiaries is a party, and  
18 other minor liens or encumbrances none of which in the opinion of the Borrower  
19 interferes materially with the use of the property affected in the ordinary conduct of the  
20 business of the Borrower, which defects, liens and other encumbrances do not  
21 individually or in the aggregate have a materially adverse effect on the business of the  
22 Borrower.

1  
2  
3  
4

**SCHEDULE 4.04**  
**TO TERM LOAN AGREEMENT**  
**SUPPLEMENTAL DISCLOSURES**  
[ None.]

1  
2  
3  
4

**SCHEDULE 4.06**  
**TO TERM LOAN AGREEMENT**

**LITIGATION**

[None.]

EXHIBIT A TO AGREEMENT

[Form of Borrowing Notice]

BORROWING NOTICE

[Date]

Ladies and Gentlemen:

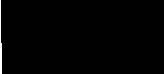


The undersigned, GULF POWER COMPANY, a Florida corporation (the "BoITower"), refers to the Tenn Loan Agreement, dated as of September 30, 2019 (as amended or modified from time to time, the "Credit Agreement", the terms defined therein being rein defined), among the undersigned, the Lenders party thereto and as Administrative Agent (the "Agent") and Lender, and hereby requests a borrowing of a Loan under the Agreement, and in that connection sets forth below the information relating to the borrowing (the "Proposed BoITowing") as required by *Section 2.02(a)* of the Agreement.

- (i) The Business Day of the Proposed BoITowing is \_\_\_\_\_.
- (ii) The Proposed BoITowing is a Emodollar Rate Loan with an initial Interest Period of \_\_\_\_\_
- (iii) The aggregate amount of the Proposed BoITowing is US\$ \_\_\_\_\_

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed BoITowing:

- (A) No Default shall have occurred and be continuing or will occur upon the making of the Proposed BoITowing, and
- (B) Each of the representations and warranties contained in the Credit Agreement, the other Loan Documents or in any document or instrument delivered pursuant to or in connection with the Credit Agreement will be true in all material respects as of the time of the making of the Proposed BoITowing with the same effect as if made at and as of that time (except to the extent that such representations and warranties relate expressly to an earlier date).

1           The proceeds of the Proposed Borrowing should be wire transferred to the Borrower in  
2 accordance with the following wire transfer instructions:

3  
4           Name of Bank:                               Bank of America N.A.  
5           Street Address of Bank:               100 West 33<sup>rd</sup> Street  
6           City/State of Bank:                   New York, NY  
7           ABA Number of Bank:                 
8           SWIFT:                                     
9           Name of Account:                   Gulf Power Company  
10          Account Number at Bank:             
11  
12  
13

14                               *[SIGNATURE APPEARS ON THE FOLLOWING PAGE]*  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55



Very truly yours,

**GULF POWER COMPANY**

By:             
Paul I. Cutler  
Treasurer

[Gulf Power Company / BMO – Term Loan Credit – Signature Page – Borrowing Notice]

1 EXHIBIT B TO AGREEMENT

2  
3 [Form of Note]

4 NOTE

5  
6 \$300,000,000.00

Dated: September 30, 2019

7  
8 FOR VALUE RECEIVED, the undersigned, GULF POWER COMPANY, a Florida corporation  
9 (hereinafter, together with its successors in title and assigns, called "**Borrower**"), by this  
10 promissory note (hereinafter called "**this Note**"), absolutely and unconditionally promises to pay  
11 to the order of [REDACTED] (hereinafter, together with its successors in title and  
12 permitted assigns, called "**Lender**" or "**Holder**"), the principal sum of THREE HUNDRED  
13 MILLION DOLLARS AND NO/100 DOLLARS (\$300,000,000.00), or the aggregate unpaid  
14 principal amount of the Loan evidenced by this Note made by Lender to Borrower pursuant to  
15 the Agreement (as hereinafter defined), whichever is less, on the Maturity Date (as defined in the  
16 Agreement), and to pay interest on the principal sum outstanding hereunder from time to time  
17 from the Effective Date until the said principal sum or the unpaid portion thereof shall have been  
18 paid in full.

19  
20 The unpaid principal (not at the time overdue) of this Note shall bear interest at the annual rate  
21 from time to time in effect under the Agreement referred to below (the "**Applicable Rate**").  
22 Accrued interest on the unpaid principal under this Note shall be payable on the dates, and in the  
23 manner, specified in the Agreement.

24  
25 On the Maturity Date there shall become absolutely due and payable by Borrower hereunder, and  
26 the Borrower hereby promises to pay to the Holder (as hereinafter defined) hereof, the balance (if  
27 any) of the principal hereof then remaining unpaid, all of the unpaid interest accrued hereon and  
28 all (if any) other amounts payable on or in respect of this Note or the indebtedness evidenced  
29 hereby.

30  
31 Overdue principal of the Loans, and to the extent permitted by applicable law, overdue interest  
32 on the Loans and all other overdue amounts payable under this Note, shall bear interest payable  
33 on demand in the case of (i) overdue principal of or overdue interest on any Loan, at a rate per  
34 annum equal to two percent (2%) above the rate then applicable to such Loan, and (ii) any other  
35 overdue amounts, at a rate per annum equal to two percent (2%) above the Base Rate, in each  
36 case until such amount shall be paid in full (after, as well as before, judgment).

37  
38 Each payment of principal, interest or other sum payable on or in respect of this Note or the  
39 indebtedness evidenced hereby shall be made by the Borrower directly to the Agent at the  
40 Agent's office, as provided in the Agreement, for the account of the Holder, not later than 2:00  
41 p.m., New York, New York time, on the due date of such payment. All payments on or in respect  
42 of this Note or the indebtedness evidenced hereby shall be made without set-off or counterclaim  
43 and free and clear of and without any deduction of any kind for any taxes, levies, fees,  
44 deductions withholdings, restrictions or conditions of any nature, except as expressly set forth in  
45 *Section 3.09* and *Section 8.02* of the Agreement.

1 Absent manifest error, a certificate or statement signed by an authorized officer of Lender shall  
2 be conclusive evidence of the amount of principal due and unpaid under this Note as of the date  
3 of such certificate or statement.  
4

5 This Note is made and delivered by the Borrower to the Lender pursuant to that certain Term  
6 Loan Agreement, dated as of September 30, 2019, among the Borrower, the lenders party thereto,  
7 and [REDACTED] as Administrative Agent and Lender (such agreement, as originally  
8 executed, or, if varied or supplemented or amended and restated from time to time hereafter, as  
9 so varied or supplemented or amended and restated, called the "**Agreement**"). This Note  
10 evidences the obligations of Borrower (a) to repay the principal amount of the Loans made by  
11 Lender to Borrower under the Agreement, (b) to pay interest, as provided in the Agreement on  
12 the principal amount hereof remaining unpaid from time to time, and (c) to pay other amounts  
13 which may become due and payable hereunder as provided herein and in the Agreement.  
14

15 No reference herein to the Agreement, to any of the Schedules or Exhibits annexed thereto, or to  
16 any of the Loan Documents or to any provisions of any thereof, shall impair the obligations of  
17 the Borrower, which are absolute, unconditional and irrevocable, to pay the principal of and the  
18 interest on this Note and to pay all (if any) other amounts which may become due and payable on  
19 or in respect of this Note or the indebtedness evidenced hereby, strictly in accordance with the  
20 terms and the tenor of this Note.  
21

22 All capitalized terms used herein and defined in the Agreement shall have the same meanings  
23 herein as therein. For all purposes of this Note, "**Holder**" means the Lender or any other person  
24 who is at the time the lawful holder in possession of this Note.  
25

26 Pursuant to, and upon the terms contained in the Agreement, the entire unpaid principal of this  
27 Note, all of the interest accrued on the unpaid principal of this Note and all (if any) other  
28 amounts payable on or in respect of this Note or the indebtedness evidenced hereby may be  
29 declared to be or may automatically become immediately due and payable, whereupon the entire  
30 unpaid principal of this Note and all (if any) other amounts payable on or in respect of this Note  
31 or the indebtedness evidenced hereby shall (if not already due and payable) forthwith become  
32 and be due and payable to the Holder of this Note without presentment, demand, protest, notice  
33 of protest or any other formalities of any kind, all of which are hereby expressly and irrevocably  
34 waived by the Borrower.  
35

36 All computations of interest payable as provided in this Note shall be determined in accordance  
37 with the terms of the Agreement.  
38

39 Should all or any part of the indebtedness represented by this Note be collected by action at law,  
40 or in bankruptcy, insolvency, receivership or other court proceedings, or should this Note be  
41 placed in the hands of attorneys for collection after default, the Borrower hereby promises to pay  
42 to the Holder of this Note, upon demand by the Holder at any time, in addition to principal,  
43 interest and all (if any) other amounts payable on or in respect of this Note or the indebtedness  
44 evidenced hereby, all court costs and reasonable attorneys' fees (including, without limitation,  
45 such reasonable fees of any in-house counsel) and all other reasonable collection charges and  
46 expenses incurred or sustained by the Holder.  
47  
48

1 The Borrower hereby irrevocably waives notices of acceptance, presentment, notice of non-  
2 payment, protest, notice of protest, suit and all other conditions precedent in connection with the  
3 delivery, acceptance, collection and/or enforcement of this Note.  
4

5 THE BORROWER HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO  
6 ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH  
7 THIS NOTE, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE  
8 OF SUCH RIGHTS AND OBLIGATIONS.  
9

10 This Note is intended to take effect as a sealed instrument.  
11

12 This Note and the obligations of the Borrower hereunder shall be governed by and interpreted  
13 and determined in accordance with the laws of the State of New York.  
14

15 *[SIGNATURE APPEARS ON THE FOLLOWING PAGE]*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55

1 IN WITNESS WHEREOF, this Note has been duly executed by GULF POWER COMPANY, on  
2 the day and in the year first above written.  
3

4 **GULF POWER COMPANY**  
5  
6  
7

8 By:\_  
9 Paul I. Cutler  
10 Treasurer  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

45 [Gulf Power Company / BMO – Term Loan Agreement – Signature Page – Note]  
46  
47  
48

EXHIBIT C TO AGREEMENT

[Form of Interest Rate Notice]

INTEREST RATE NOTICE

[Date]

Ladies and Gentlemen:

Pursuant to *Section 2.06* of that certain Term Loan Agreement, dated as of September 30, 2019 (as amended or modified from time to time, the "Credit Agreement", the terms defined therein as therein defined), among the undersigned, the Lenders party thereto and \_\_\_\_\_ ' as Administrative Agent and Lender, the BoITower hereby gives you irrevocable notice of its request to Convert the Loan(s) and/or Interest Periods currently in effect under the Credit Agreement as follows *[select from the following as applicable]*:

- on [ date ], to Convert \$[            ] of the aggregate outstanding principal amount of the Loan(s) bearing interest at the Eurodollar Rate into a Base Rate Loan; [and/or]
- on [ date ], to Convert \$[            ] of the aggregate outstanding principal amount of the Loan(s) bearing interest at the Base Rate into a Eurodollar Rate Loan having an Interest Period of [            ] month(s) ending on [ date ]; [and/or]
- on [ date ], to continue \$[            ] of the aggregate outstanding principal amount of the Loan(s) bearing interest at the Eurodollar Rate, as a Eurodollar Rate Loan having an Interest Period of [            ] month(s) ending on [ date ].

Any capitalized terms used in this notice which are defined in the Credit Agreement have the meanings specified for those terms in the Credit Agreement.

*[Signature Appears on Following Page]*



Very truly yours,

**GULF POWER COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

[Gulf Power Company / BMO – Term Loan Agreement – Signature Page – Interest Rate Notice]

1 **EXHIBIT D TO AGREEMENT**

2 **Form of Borrower's Certificate**

3 \* \* \*

4 **CERTIFICATE OF**

5 **GULF POWER COMPANY**

6  
7  
8  
9  
10 September 30, 2019

11  
12 This Certificate is given pursuant to that certain Term Loan Agreement between Gulf Power  
13 Company (the "**Borrower**") the Lenders party thereto and [REDACTED], as Administrative  
14 Agent and Lender (the "**Agent**"), dated as of September 30, 2019 (the "**Credit Agreement**").  
15 Each initially capitalized term which is used and not otherwise defined in this Certificate shall  
16 have has the meaning specified for such term in the Credit Agreement. This Certificate is  
17 delivered in satisfaction of the conditions precedent set forth in *Section 6.01* of the Credit  
18 Agreement.  
19

- 20 1. The Borrower hereby provides notice to the Agent that September 30, 2019, is  
21 hereby deemed to be the Effective Date.  
22  
23 2. The Borrower hereby certifies to the Agent that as of the Effective Date, except in  
24 respect of the matters described in Schedule 4.04 of the Credit Agreement, there  
25 has been no material adverse change in the business or financial condition of any  
26 of the Borrower or any of its Subsidiaries taken as a whole from that set forth in  
27 the financial statements for the period ended December 31, 2018, referred to in  
28 *Section 4.04* of the Credit Agreement. This representation and warranty is made  
29 only as of the Effective Date and shall not be deemed made or remade on or as of  
30 any subsequent date notwithstanding anything contained in the Credit Agreement,  
31 the other Loan Documents or in any document or instrument delivered pursuant to  
32 or in connection with the Credit Agreement.  
33  
34 3. The Borrower hereby further certifies that as of the Effective Date, the  
35 representations and warranties of the Borrower contained in the Credit Agreement  
36 are true and correct in all material respects (except to the extent that such  
37 representations and warranties expressly relate to an earlier date) and there exists  
38 no Default.  
39  
40

41 *[Signature Appears on Next Page]*  
42  
43  
44  
45  
46  
47  
48  
49

**IN WITNESS WHEREOF**, the undersigned has duly executed this Borrower's Certificate effective as of the date first set forth above.

**GULF POWER COMPANY**

By:             
Paul I. Cutler  
Treasurer

[Gulf Power Company / [REDACTED] – Term Loan Agreement – Signature Page – Borrower’s Certificate]

1 EXHIBIT E

2  
3 FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

4 \* \* \*

5  
6  
7 **ASSIGNMENT AND ASSUMPTION AGREEMENT**  
8

9 This Assignment and Assumption Agreement (the “**Assignment and Assumption**  
10 **Agreement**”) is dated as of the Effective Date set forth below and is entered into by and between  
11 the Assignor identified in item 1 below (the “**Assignor**”) and the Assignee identified in item 2  
12 below (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings  
13 given to them in the Credit Agreement identified below (as amended, the “**Credit Agreement**”),  
14 receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and  
15 Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by  
16 reference and made a part of this Assignment and Assumption Agreement as if set forth herein in  
17 full.  
18

19 For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the  
20 Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor,  
21 subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement,  
22 as of the Effective Date inserted by the Agent as contemplated below (i) all of the Assignor’s  
23 rights and obligations in its capacity as a Lender under the Credit Agreement and any other  
24 documents or instruments delivered pursuant thereto to the extent related to the amount and  
25 percentage interest identified below of all of such outstanding rights and obligations of the  
26 Assignor under the respective facilities identified below (including without limitation any letters  
27 of credit and guarantees included in such facilities), and (ii) to the extent permitted to be  
28 assigned under applicable law, all claims, suits, causes of action and any other right of the  
29 Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising  
30 under or in connection with the Credit Agreement, any other documents or instruments delivered  
31 pursuant thereto or the loan transactions governed thereby or in any way based on or related to  
32 any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice  
33 claims, statutory claims and all other claims at law or in equity related to the rights and  
34 obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and  
35 assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to  
36 herein collectively as the “**Assigned Interest**”). Each such sale and assignment is without  
37 recourse to the Assignor and, except as expressly provided in this Assignment and Assumption  
38 Agreement, without representation or warranty by the Assignor.  
39

- 40  
41
1. Assignor: \_\_\_\_\_  
[Assignor [is] [is not] a Defaulting Lender]
  2. Assignee: \_\_\_\_\_  
[for each Assignee, indicate [affiliate] of [identify Lender]]
  3. Borrower: Gulf Power Company

4. Agent: [REDACTED] as the administrative agent under the Credit Agreement

5. Credit Agreement: The \$300,000,000 Credit Agreement dated as of September 30, 2019 among Gulf Power Company, Lenders that are parties thereto and [REDACTED] as the Agent

6. Assigned Interest:

Assignor	Assignee	Facility Assigned <sup>1</sup>	Aggregate Amount of Commitment/ Loans for all Lenders <sup>2</sup>	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment / Loans <sup>3</sup>	CUSIP Number
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

[7. Trade Date: - ]<sup>4</sup>

[PAGE BREAK]

<sup>1</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment

<sup>2</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>3</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder

<sup>4</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: \_ 4 \_ , 20\_ [TO BE INSERTED BY THE AGENT  
AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN  
THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption Agreement are hereby agreed to:

**ASSIGNOR**

[NAME OF ASSIGNOR]

By: \_

Title:

**ASSIGNEE**

[NAME OF ASSIGNEE]

By: \_

Title:

[Consented to and]5 Accepted:

, as  
Agent

By: \_

Title:

[Consented to:]6

By: \_

Title:

5 To be added only if the consent of the Agent is required by the terms of the Credit Agreement.

6 To be added only if the consent of the Borrower and/or other parties is required by the terms of the Credit Agreement.



STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION AGREEMENT

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption Agreement and to consummate the transactions contemplated hereby and (iv) it [is / is not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption Agreement and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.04 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption Agreement and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption Agreement and to purchase the Assigned Interest, and (vii) if it is organized under the laws of a jurisdiction outside of the United States attached to the Assignment and Assumption Agreement is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the

1 obligations which by the terms of the Loan Documents are required to be performed by it as a  
2 Lender.

3  
4 2. Payments. From and after the Effective Date, the Agent shall make all payments  
5 in respect of the Assigned Interest (including payments of principal, interest, fees and other  
6 amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective  
7 Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the  
8 Agent for periods prior to the Effective Date or with respect to the making of this assignment  
9 directly between themselves. Notwithstanding the foregoing, the Administrative Agent shall  
10 make all payments of interest, fees or other amounts paid or payable in kind from and after the  
11 Effective Date to the Assignee.

12  
13 3. General Provisions. This Assignment and Assumption Agreement shall be  
14 binding upon, and inure to the benefit of, the parties hereto and their respective successors and  
15 assigns. This Assignment and Assumption Agreement may be executed in any number of  
16 counterparts, which together shall constitute one instrument. Delivery of an executed counterpart  
17 of a signature page of this Assignment and Assumption Agreement by telecopy shall be effective  
18 as delivery of a manually executed counterpart of this Assignment and Assumption Agreement.  
19 This Assignment and Assumption Agreement shall be governed by, and construed in accordance  
20 with, the law of the State of New York.

EXHIBIT F TO AGREEMENT

[Form of Opinion of Borrower's Counsel]

September 30, 2019



Re: Gulf Power Company US\$300,000,000 Term Loan Facility

Ladies and Gentlemen :

This opinion is furnished to you pursuant to *Section 6.0J(e)* of that certain Term Loan Agreement, dated as of September 30, 2019 (the "Credit Agreement"), among GULF POWER COMPANY a Florida corporation (the "BoITower"), the lenders parties thereto from time to time and \_\_\_\_\_, as Administrative Agent (the "Agent"). This opinion is furnished to you at the request of the BoITower. Capitalized terms defined in the Credit Agreement and not otherwise defined herein have the meanings set forth therein.

We have acted as special counsel to the BoITower, in connection with the documents described in *Schedule I* attached hereto and made a part hereof (the "Operative Documents").

We have made such examinations of the federal law of the United States and the laws of the State of Florida and the State of New York as we have deemed relevant for purposes of this opinion, and solely for the purposes of the opinions in paragraph 6, the Public Utility Holding Company Act of 2005 and the Federal Power Act (the Public Utility Holding Company Act of 2005 and the Federal Power Act and the rules and regulations issued thereunder being referred to herein as the "Applicable Energy Laws"), and have not made any independent review of the law of any other state or other jurisdiction; provided however, we have made no investigation as to, and we express no opinion with respect to, any securities or blue sky laws, any state or federal tax laws, or any matters relating to the Applicable Energy Laws (except for the purposes of the opinion in paragraph 6), the Public Utility Regulatory Policies Act of 1978, the Energy Policy Act of 2005, or the rules and regulations under any of the foregoing. Additionally, the opinions contained herein shall not be construed as expressing any opinion regarding local statutes, ordinances, administrative decisions, or regarding the rules and regulations of counties, towns, municipalities or special political subdivisions (whether created or enabled through legislative action at the state or regional level), or regarding judicial decisions to the extent they deal with any of the foregoing (collectively, "Excluded Laws"). Subject to the foregoing provisions of this paragraph, the opinions expressed herein are limited solely to the federal law of the United States and the law of the State of Florida and the State of New York insofar as they bear on the matters covered hereby.

1           We have reviewed only the Operative Documents and the other documents and  
2 instruments described in Schedule II attached hereto and made a part hereof (together with the  
3 Operative Documents, the "Documents") and have made no other investigation or inquiry. We  
4 have also relied, without additional investigation, upon the facts set forth in the representations  
5 made by the Borrower in the Documents.  
6

7           In our examination of the foregoing and in rendering the following opinions, in addition  
8 to the assumptions contained elsewhere in this letter, we have, with your consent, assumed  
9 without investigation (and we express no opinion regarding the following):  
10

11           (a)     the genuineness of all signatures (other than signatures of the Borrower on the  
12 Operative Documents) and the legal capacity of all individuals who executed Documents  
13 individually or on behalf of any of the parties thereto, the accuracy and completeness of each  
14 Document submitted for our review, the authenticity of all Documents submitted to us as  
15 originals, the conformity to original Documents of all Documents submitted to us as certified or  
16 photocopies and the authenticity of the originals of such copies;  
17

18           (b)     that each of the parties to the Operative Documents (other than the Borrower) is a  
19 duly organized or created, validly existing entity in good standing under the laws of the  
20 jurisdiction of its organization or creation;  
21

22           (c)     the due execution and delivery of the Operative Documents by all parties thereto  
23 (other than the Borrower);  
24

25           (d)     that all parties to the Operative Documents (other than the Borrower) have the  
26 power and authority to execute and deliver the Operative Documents, as applicable, and to  
27 perform their respective obligations under the Operative Documents, as applicable;  
28

29           (e)     that each of the Operative Documents is the legal, valid and binding obligation of  
30 each party thereto (other than the Borrower), enforceable in each case against each such party in  
31 accordance with the respective terms of the applicable Operative Documents;  
32

33           (f)     that the conduct of the parties to the Operative Documents has complied with all  
34 applicable requirements of good faith, fair dealing and conscionability;  
35

36           (g)     that there are no agreements or understandings among the parties, written or oral,  
37 and there is no usage of trade or course of prior dealing among the parties that would, in either  
38 case, define, supplement or qualify the terms of any of the Operative Documents (except as  
39 specifically set forth in the Operative Documents); and  
40

41           (h)     that none of the addressees of this letter know that the opinions set forth herein  
42 are incorrect and there has not been any mutual mistake of fact or misunderstanding, fraud,  
43 duress or undue influence relating to the matters which are the subject of our opinions.  
44

45           As used in the opinions expressed herein, the phrase "to our knowledge" refers only to  
46 the actual current knowledge of those attorneys in our firm who have given substantive attention  
47 to the Borrower in connection with the transaction contemplated pursuant to the Credit  
48 Agreement (the "Transaction") and does not (i) include constructive notice of matters or

1 information, or (ii) imply that we have undertaken any independent investigation (a) with any  
2 persons outside our firm, or (b) as to the accuracy or completeness of any factual representation  
3 or other information made or furnished in connection with the Transaction. Furthermore, such  
4 reference means only that we do not know of any fact or circumstance contradicting the  
5 statement that follows the reference, and does not imply that we know the statement to be correct  
6 or have any basis (other than the Documents) for that statement.  
7

8 Based solely upon our examination and consideration of the Documents, and in reliance  
9 thereon, and in reliance upon the factual representations contained in the Documents, and our  
10 consideration of such matters of law and fact as we have considered necessary or appropriate for  
11 the expression of the opinions contained herein, and subject to the limitations, qualifications and  
12 assumptions expressed herein, we are of the opinion that:  
13

14 1. The Borrower is validly existing as a corporation under the laws of the State of  
15 Florida and its status is active. The Borrower has the requisite corporate power and authority to  
16 execute, deliver and perform the Operative Documents to which it is a party.  
17

18 2. The execution, delivery and performance of the Operative Documents entered  
19 into by the Borrower have been duly authorized by all necessary corporate action of the  
20 Borrower and the Operative Documents to which the Borrower is a party has been duly executed  
21 and delivered by the Borrower.  
22

23 3. Each of the Operative Documents to which the Borrower is a party constitutes a  
24 valid and binding obligation of the Borrower enforceable against the Borrower in accordance  
25 with its terms.  
26

27 4. The execution and delivery of the Operative Documents to which the Borrower is  
28 a party and the consummation by the Borrower of the transactions contemplated in the Operative  
29 Documents to which the Borrower is a party will not conflict with or constitute a breach or  
30 violation of any of the terms or provisions of, or constitute a default under (A) the Articles of  
31 Incorporation of the Borrower, as amended, or the Bylaws, as amended, of the Borrower (B) any  
32 existing federal, New York or Florida statute or any rule or regulation thereunder (in each case  
33 other than (i) any Excluded Laws, as to which no opinion is expressed and (ii) any Applicable  
34 Energy Laws, which are addressed in paragraph 6 below) of any federal, New York or Florida  
35 governmental agency or body having jurisdiction over the Borrower, except where the same  
36 would not have a material adverse effect on the business, properties or financial condition of the  
37 Borrower, a material adverse effect on the ability of the Borrower to perform its obligations  
38 under the Operative Documents or a material adverse effect on the validity or enforceability of  
39 the Operative Documents, assuming that the aggregate principal amount of the Loans and all  
40 other applicable indebtedness, equity securities and all other liabilities and obligations as  
41 guarantor, endorser or surety of the Borrower at any one time outstanding would not exceed the  
42 limits set forth in the FPSC Financing Order, (C) require any consent, approval, authorization or  
43 other order of any federal, New York or Florida court, regulatory body, administrative agency or  
44 other federal, New York or Florida governmental body having jurisdiction over the Borrower (in  
45 each case other than under (i) any Excluded Laws as to which no opinion is expressed and (ii)  
46 any Applicable Energy Laws, which are addressed in paragraph 6 below), except those which  
47 have been obtained on or prior to the date hereof and assuming that the aggregate principal

1 amount of the Loans and all other applicable indebtedness, equity securities and all other  
2 liabilities and obligations as guarantor, endorser or surety of the Borrower at any one time  
3 outstanding would not exceed the limits set forth in the FPSC Financing Order, (D) to our  
4 knowledge, conflict with or constitute a breach of any of the terms or provisions of, or a default  
5 under, any material agreement or material instrument to which the Borrower is a party or by  
6 which the Borrower or its properties are bound, or (E) to our knowledge, result in the creation or  
7 imposition of any Lien upon any of the material properties or assets of the Borrower pursuant to  
8 the terms of any mortgage, indenture, agreement or instrument to which the Borrower is a party  
9 or by which it is bound, except as contemplated in any of the Operative Documents.

10  
11 5. The Borrower is not an “investment company”, as such term is defined in the  
12 Investment Company Act of 1940.

13  
14 6. The execution and delivery of the Operative Documents to which the Borrower is  
15 a party and the consummation by the Borrower of the transactions contemplated in the Operative  
16 Documents to which the Borrower is a party will not (A) constitute a breach or violation by the  
17 Borrower of any Applicable Energy Law, or (B) require any consent, approval, authorization or  
18 other order of any U.S. federal regulatory body, administrative agency or other U.S. federal  
19 governmental body having jurisdiction over the Borrower pursuant to any Applicable Energy  
20 Law.

21  
22 The opinions set forth above are subject to the following qualifications:

23  
24 A. The enforceability of the Operative Documents may be limited or affected  
25 by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance,  
26 fraudulent transfer or other laws affecting creditors’ rights generally, considerations of  
27 public policy and by general principles of equity including, without limitation, concepts  
28 of materiality, reasonableness, good faith and fair dealing and the possible unavailability  
29 of specific performance or injunctive relief, regardless of whether considered in a  
30 proceeding in equity or at law. Without limiting the generality of the foregoing, we  
31 express no opinion concerning:

32  
33 (i) any purported waiver of legal rights of the Borrower under any of  
34 the Operative Documents, or any purported consent thereunder, relating to the  
35 rights of the Borrower (including, without limitation, marshaling of assets,  
36 reinstatement and rights of redemption, if any), or duties owing to either of them,  
37 existing as a matter of law (including, without limitation, any waiver of any  
38 provision of the Uniform Commercial Code in effect in the State of New York  
39 and the State of Florida) except to the extent the Borrower may so waive and has  
40 effectively so waived (whether in any of the Operative Documents or otherwise);  
41 or

42  
43 (ii) any provisions in any of the Operative Documents (a) restricting  
44 access to legal or equitable redress or otherwise, requiring submission to the  
45 jurisdiction of the courts of a particular state where enforcement thereof is  
46 deemed to be unreasonable in light of the circumstances or waiving any rights to  
47 object to venue or inconvenient forum, (b) providing that any other party’s course



1 of dealing, delay or failure to exercise any right, remedy or option under any of  
2 the Operative Documents shall not operate as a waiver, (c) purporting to establish  
3 evidentiary standards for suits or proceedings to enforce any of the Operative  
4 Documents, (d) allowing any party to declare indebtedness to be due and payable,  
5 in any such case without notice, (e) providing for the reimbursement by the  
6 non-prevailing party of the prevailing party's legal fees and expenses; (f) with  
7 respect to the enforceability of the indemnification provisions in any of the  
8 Operative Documents which may be limited by applicable laws or public policy,  
9 (g) providing that forum selection clauses are binding on the court or courts in the  
10 forum selected, (h) limiting judicial discretion regarding the determination of  
11 damages and entitlement to attorneys' fees and other costs, (i) which deny a party  
12 who has materially failed to render or offer performance required by any of the  
13 Operative Documents the opportunity to cure that failure unless permitting a cure  
14 would unreasonably hinder the non-defaulting party from making substitute  
15 arrangements for performance or unless it was important in the circumstances to  
16 the non-defaulting party that performance occur by the date stated in the  
17 agreement, or (j) which purport to waive any right to trial by jury.

18  
19 B. The foregoing opinions are subject to applicable laws with respect to  
20 statutory limitations of the time periods for bringing actions.

21  
22 C. We express no opinion as to the subject matter jurisdiction of any United  
23 States federal court to adjudicate any claim relating to any Operative Documents where  
24 jurisdiction based on diversity of citizenship under 28 U.S.C. §1332 does not exist.  
25

26 This opinion is limited to the matters stated herein and no opinions may be implied or  
27 inferred beyond the matters expressly stated herein. We have assumed no obligation to advise  
28 you or any other Person who may be permitted to rely on the opinions expressed herein as  
29 hereinafter set forth beyond the opinions specifically expressed herein.  
30

31 The opinions expressed herein are as of this date, and we assume no obligation to update  
32 or supplement our opinions to reflect any facts or circumstances which may come to our  
33 attention or any changes in law which may occur.  
34

35 This opinion is provided to the addressee for its benefit and the benefit of any Person that  
36 becomes a Lender in accordance with the provisions of the Agreement, and is provided only in  
37 connection with the Transaction and may not be relied upon in any respect by any other Person  
38 or for any other purpose. Without our prior written consent, this opinion letter may not be  
39 quoted in whole or in part or otherwise referred to in any document or report and may not be  
40 furnished to any Person (other than a Person that becomes a Lender in accordance with the  
41 provisions of the Agreement), provided that, if requested by regulators having oversight over the  
42 addressee, the addressee may furnish copies of this opinion to such regulators so long as such  
43 regulators do not rely on this opinion in any respect.

1  
2  
3  
4  
5

Very truly yours,

SQUIRE PATTON BOGGS (US) LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

**SCHEDULE I**

**TO**

**OPINION OF SQUIRE PATTON BOGGS (US) LLP**

**List of Operative Documents**

- (1) Term Loan Agreement, dated as of September 30, 2019, by and among the Borrower, the lenders parties thereto from time to time and [REDACTED], as Administrative Agent (the “Agreement”).
- (2) Certificate of the Borrower, dated as of September 30, 2019.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**SCHEDULE II**

**TO**

**OPINION OF SQUIRE PATTON BOGGS (US) LLP**

**List of Supporting Documents**

(1) Constituent Documents – Gulf Power Company:

(a) Certificate of the Secretary of the Borrower, with respect to (i) Articles of Incorporation of the Borrower, as amended, (ii) the Bylaws of the Borrower, as amended, (iii) the active status of the Borrower in the State of Florida, and (iv) the resolutions of the Board of Directors of the Borrower approving the transactions contemplated pursuant to the Operative Documents.

(b) Certificate of the Secretary of the Borrower, with respect to the incumbency and specimen signatures of the officers of the Borrower executing the Operative Documents on behalf of the Borrower.

(c) Officer's Certificate of the Borrower made pursuant to the resolutions of the Board of Directors of the Borrower.

(2) The FPSC Financing Order

1 EXHIBIT G-1

2  
3  
4 **U.S. TAX COMPLIANCE CERTIFICATE**

5  
6 **(For Foreign Lenders**  
7 **That Are Not Partnerships for U.S. Federal Income Tax Purposes)**  
8

9 Reference is hereby made to that certain Term Loan Agreement, dated as of September  
10 30, 2019 (the “**Credit Agreement**”), between Gulf Power Company (as the “**Borrower**”), the  
11 Lenders party thereto and [REDACTED], as Administrative Agent and Lender (the “**Agent**”).  
12

13 Pursuant to the provisions of *Section 3.09* of the Credit Agreement, the undersigned  
14 hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) in respect of  
15 which it is providing this certificate, (ii) it is not a bank within the meaning of Section  
16 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the  
17 meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation  
18 related to the Borrower as described in Section 881(c)(3)(C) of the Code.  
19

20 The undersigned has furnished the Agent and the Borrower with a certificate of its  
21 non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN, as applicable). By executing this  
22 certificate, the undersigned agrees that (1) if the information provided on this certificate changes,  
23 the undersigned shall promptly so inform the Agent and the Borrower, and (2) the undersigned  
24 shall have at all times furnished the Agent and the Borrower with a properly completed and  
25 currently effective certificate in either the calendar year in which each payment is to be made to  
26 the undersigned, or in either of the two calendar years preceding such payments.  
27

28 Unless otherwise defined herein, terms defined in the Credit Agreement and used herein  
29 shall have the meanings given to them in the Credit Agreement.  
30

31 [NAME OF LENDER]  
32  
33  
34

35 By: \_\_\_\_\_  
36 Name:  
37 Title:  
38  
39

40 Date: \_\_\_\_\_ 42 , 201[ ]  
41

1 EXHIBIT G-2

2  
3  
4 **U.S. TAX COMPLIANCE CERTIFICATE**

5  
6 **(For Foreign Participants**  
7 **That Are Not Partnerships for U.S. Federal Income Tax Purposes)**  
8

9 Reference is hereby made to that certain Term Loan Agreement, dated as of September  
10 30, 2019 (the “**Credit Agreement**”), between Gulf Power Company (as the “**Borrower**”), the  
11 Lenders party thereto and [REDACTED], as Administrative Agent and Lender (the “**Agent**”).  
12

13 Pursuant to the provisions of *Section 3.09* of the Credit Agreement, the undersigned  
14 hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of  
15 which it is providing this certificate, (ii) it is not a bank within the meaning of Section  
16 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the  
17 meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation  
18 related to the Borrower as described in Section 881(c)(3)(C) of the Code.  
19

20 The undersigned has furnished its participating Lender with a certificate of its non-U.S.  
21 Person status on IRS Form W-8BEN-E (or W-8BEN, as applicable). By executing this  
22 certificate, the undersigned agrees that (1) if the information provided on this certificate changes,  
23 the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall  
24 have at all times furnished such Lender with a properly completed and currently effective  
25 certificate in either the calendar year in which each payment is to be made to the undersigned, or  
26 in either of the two calendar years preceding such payments.  
27

28 Unless otherwise defined herein, terms defined in the Credit Agreement and used herein  
29 shall have the meanings given to them in the Credit Agreement.  
30

31 [NAME OF PARTICIPANT]  
32  
33  
34

35 By: \_\_\_\_\_  
36 Name:  
37 Title:  
38  
39

40 Date: \_\_\_\_\_ 42 , 201[ ]  
41



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

EXHIBIT G-3

**U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants  
That Are Partnerships for U.S. Federal Income Tax Purposes)**

Reference is hereby made to that certain Term Loan Agreement, dated as of September 30, 2019 (the “**Credit Agreement**”), between Gulf Power Company (as the “**Borrower**”), the Lenders party thereto and [REDACTED], as Administrative Agent and Lender (the “**Agent**”).

Pursuant to the provisions of *Section 3.09* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E (or W-8BEN, as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, as applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 201[ ]

1 EXHIBIT G-4

2  
3 **U.S. TAX COMPLIANCE CERTIFICATE**

4  
5 **(For Foreign Lenders**  
6 **That Are Partnerships for U.S. Federal Income Tax Purposes)**  
7

8 Reference is hereby made to that certain Term Loan Agreement, dated as of September  
9 30, 2019 (the “**Credit Agreement**”), between Gulf Power Company (as the “**Borrower**”), the  
10 Lenders party thereto and [REDACTED], as Administrative Agent and Lender (the “**Agent**”).  
11

12 Pursuant to the provisions of *Section 3.09* of the Credit Agreement, the undersigned  
13 hereby certifies that (i) it is the sole record owner of the Loan(s) in respect of which it is  
14 providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial  
15 owners of such Loan(s), (iii) with respect to the extension of credit pursuant to this Credit  
16 Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect  
17 partners/members is a bank extending credit pursuant to a loan agreement entered into in the  
18 ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code,  
19 (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower  
20 within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect  
21 partners/members is a controlled foreign corporation related to the Borrower as described in  
22 Section 881(c)(3)(C) of the Code.  
23

24 The undersigned has furnished the Agent and the Borrower with IRS Form W-8IMY  
25 accompanied by one of the following forms from each of its partners/members that is claiming  
26 the portfolio interest exemption: (i) an IRS Form W-8BEN-E (or W-8BEN, as applicable) or (ii)  
27 an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, as applicable)  
28 from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest  
29 exemption. By executing this certificate, the undersigned agrees that (1) if the information  
30 provided on this certificate changes, the undersigned shall promptly so inform the Agent and the  
31 Borrower, and (2) the undersigned shall have at all times furnished the Agent and the Borrower  
32 with a properly completed and currently effective certificate in either the calendar year in which  
33 each payment is to be made to the undersigned, or in either of the two calendar years preceding  
34 such payments.  
35

36 Unless otherwise defined herein, terms defined in the Credit Agreement and used herein  
37 shall have the meanings given to them in the Credit Agreement.  
38

39 [NAME OF LENDER]  
40

41  
42 By: \_\_\_\_\_  
43 Name:  
44 Title:  
45

46 Date: \_\_\_\_\_, 201[ ]  
47